

MONITOR

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

www.ltccc.org • SUMMER 2010



LTCCC to Hold 2ND ANNUAL RECEPTION

Date: October 6th, 6-8pm

Theme: Empowerment of Consumers

Please come and help us honor two outstanding government officials whose careers have focused on empowering consumers:



NYS Assembly Health Committee Chair, Honorable Richard Gottfried

and

NYS Office for the Aging Director, Michael Burgess



A cocktail reception will be followed by an educational presentation and discussion with the honorees.

For more information, to purchase tickets or become a sponsor please call Sara Rosenberg at 212-385-0355 or email sara@ltccc.org □

Update on LTCCC Project to Improve Gov't Oversight

With funding from the Robert Sterling Clark Foundation, LTCCC has been working on a special project for the past year to improve government oversight of long term care in New York by engaging the different government offices responsible for ensuring good care and working to build synergy among these different offices and their missions. While there are some protocols already in place for them to share information about quality issues – for example, the NYS Department of Health (DOH) and NYS Attorney General's office's Medicaid Fraud Control Unit (MFCU) have a "memorandum of understanding" to relay to one another relevant information about their nursing home work – LTCCC's research has found that there are some instances of apparent disconnects between the different agencies when it comes to actual instances where consumers are at risk or have been harmed, or taxpayer money has not been used appropriately. In the example mentioned above, for instance,

“Input from stakeholders across New York has been critical to these efforts...”

our examination of public records found cases where MFCU had successfully prosecuted cases of serious nursing home abuse that DOH had not pursued.

It is important to note that our goal in this project is not to cast blame or attack any state office but, rather, to find concrete ways in which the work of the different offices individually and as a whole can be improved so that, in turn, consumer care is improved. Thus, when we found the cases where MFCU had successfully prosecuted cases that DOH had passed on, we presented our findings to both offices (individually) and discussed how to overcome obstacles to better and more cohesive enforcement in the law, regulations and agency practices.

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Citizen Advocacy for Nursing Home Reform: A Personal Story

By Catherine Unsino, LCSW, psychotherapist, consultant in aging and Alzheimer's, advocate in nursing home reform. Ms. Unsino is an individual member of LTCCC.

Since December 2008, when the CMS five star rating system came online (www.medicare.gov), citizens have been able to ascertain the relative strengths and weaknesses of every nursing home in the country and, more important, of those of the nursing homes in their own neighborhoods.

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Update on LTCCC Project *continued from page 1*

In a previous issue of *The Monitor* (Winter 2009-10), we reported on the work of the NYS Medicaid Inspector General to crack down on healthcare fraud using the False Claims Act, which subjects any person who presents a false claim for payment, or a false record or statement to get a claim paid, to a fine. In the last issue of *The Monitor* (Spring 2010; both issues are available on the publications page of our website, www.ltccc.org) we described our related research into how the federal Centers for Medicare and Medicaid



Services (CMS) is overseeing the quality of nursing home oversight conducted by the state regulatory agency (DOH). As of this writing, LTCCC staff is preparing brief reports on our activities and research over the year which we believe will help both the public and our government leaders gain insights into how the system works to ensure good care and how it can be improved to make things better for consumers in nursing homes and other settings.

Input from stakeholders across New York has been critical to these efforts to improve oversight and accountability. Readers of *The Monitor* and people on our action alert lists have received invitations over the course of the year to participate in a consumer listserv, consumer conference calls and on-line surveys on long term care issues. Consumers have reported to us, in

confidence, serious issues in nursing homes in their communities which we have brought to the attention of the appropriate enforcement offices. The conference calls have yielded valuable and informative discussions on such issues as nursing home downsizing, the potential impact of proposed budget allocations for home and community based services and the impact of assisted living licensure and expansion of the Medicaid Assisted Living Program (ALP) on both consumers and the Long Term Care Ombudsman Program.

The stakeholder input has been extremely valuable by informing us about the issues long term care consumers are facing “on the ground” and, hence, strengthening our advocacy in numerous areas. Though the project will end over the summer, we expect to continue the listserv and consumer conference calls into the future.

What Can You Do?

Long Term Care Ombudsman and individuals who are not associated with a provider or government agency are welcome to participate in LTCCC’s stakeholder listserv and conference calls discussed above. Please email richard@ltccc.org or call 212-385-0355 if you are interested.

UPDATE: LTCCC has issued two reports: a policy brief on the state of assisted living in New York and a study on government monitoring & oversight of nursing home care. The reports can be downloaded from www.ltccc.org. See the next issue of *The Monitor* for a discussion of the report and our findings and recommendations. □

LTCCC

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Less is More

An interdisciplinary team approach to reducing antipsychotic medication use in skilled nursing facilities.

By Dr. Louis Mudannayake, MD, CMD, Medical Director, Cobble Hill Health Center.

Introduction

Prescription abuse (of antipsychotic medication) in nursing homes continues to be an issue both nationally and internationally. In fact there is a growing body of evidence that these medications are frequently prescribed inappropriately, causing adverse effects which may result in death of our residents. There is growing concern across the country that they are being used as chemical restraints.

Quality of life of residents in a nursing home is inversely proportional to the home's antipsychotic usage. The use of these drugs by physicians on the psychotic demented seem to be more related to facility



Dr. Mudannayake presenting his program at a meeting of LTCCC members in April.

culture than sound clinical science. From a purely monetary perspective in an era of economic constraint, Medicaid had spent more on antipsychotic drugs than any other pharmacological class of medications including antibiotics, AIDS drugs, or medicines used to treat high blood pressure.

The Methodology

The program we have developed to address this problem, "Less is More," reduces antipsychotic medicine usage in the nursing home and improves quality of life of its residents. It also protects the facility from aspects of FTAG 329 (a federal regulatory guideline

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LTCCC Soon to Release Overview of States' Assisted Living Oversight

A detailed overview of states' assisted living oversight policies and regulations will be released by LTCCC for the public, news media and policy makers in the summer.

As a result of the lack of federal rules and standards for assisted living, the development of requirements for things like quality of care, minimum safety and living standards, residents' rights and medication management is left to individual states. Because of this, standards vary greatly across the country, as does the quality of their enforcement and oversight of assisted living providers.

"This overview is unique in that it focuses on how individual states conduct oversight and monitoring of quality," said Richard Mollot, LTCCC's executive director. "Previous reports on assisted living have provided valuable information on things like service & staffing requirements, medication management and physical plant requirements. Unfortunately, information on how facilities are held accountable for meeting these requirements is hard to find. This compilation of available information for each of the states will help the public, policymakers and journalists find out about critical assisted living accountability issues that affect the safety, dignity and quality of life of the elderly

who rely on assisted living."

The overview includes detailed summaries for each state with available information on issues relating to assisted living oversight, such as:

- Whether licensure is required;
- Which state agency oversees assisted living residences;
- The frequency of inspections;
- Whether inspections are announced or unannounced;
- The composition of the inspection team;
- The training of the surveyors;
- The survey protocol used;
- What remedies or sanctions are used for facilities with care problems;
- Whether a facility can challenge agency findings;
- Whether inspection reports are made available to the public.

These individual summaries, along with a general review of assisted living oversight and other assisted living resources will be available at www.assisted-living411.org. The goal of these resources is to enable both consumers and policy makers to better understand the ways in which the various states monitor the quality of assisted living care. LTCCC intends to make periodic updates to this resource as more information is made public and as state laws and regulations change. □



Quarterly Enforcement Actions Against Nursing Homes

Selected Enforcement Actions By The NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 11 Nursing Home Personnel 12/16/09 - 3/15/10

Nursing Home	Location	Defendant	Narrative	Sentence
Berkshire Nursing & Rehab	West Babylon	Pelzer, Candice, Certified Nurse Aide	Defendant CNA tied a resident's legs together with a bed sheet. The CNA did not advise anyone of the restraint and left the nursing home at the end of her shift without untying the resident.	1/8/10: Defendant sentenced to a Conditional Discharge with 3 special conditions being that Defendant will: (1) surrender her Certified Nurse's Aide Certificate, (2) not seek employment in the health care industry in any capacity for 1 year, and (3) perform 100 hours of community service. License surrendered.
Blossom South Nursing and Rehabilitation Center	Rochester	Harding, Latoya, Certified Nurse Aide	Defendant CNA stole a credit card from a 90-year old resident with dementia and used it to pay her own cable, cellphone and utility bills as well as shop at Wal-Mart and a furniture store, stealing nearly \$2,500.	1/29/10: Thirty one days of incarceration (time served), five years' probation and restitution of \$2,434.57.
Clinton County Nursing Home	Plattsburgh	Andrews, Dawn, Certified Nurse Aide	Defendant CNA left resident with dementia alone during toileting, in violation of her care plan posted on the resident's door. The resident fell to the floor and suffered a fractured hip.	1/19/10: Three years probation, one-hundred hours of community service, \$200 Victim Recoveries and fined \$500.
Eger Health Care Center of Staten Island	Staten Island	Gallo, Milagros, Licensed Practical Nurse	Defendant LPN, stole multiple pills of Percocet from several residents on multiple dates and forged her co-workers signatures on the facility's medical charts to conceal her thefts.	1/27/10: Three years' Probation.
Folts Home	Herkimer	Tillson, Margaret, Certified Nurse Aide	Defendant CNA struck a 91-year old resident on the nose and back and held the resident's arm. The resident suffered bruising.	1/13/10: Fined \$100.
Gowanda Rehabilitation and Nursing Center	Gowanda	Lewis, Sheila, Certified Nurse Aide	Defendant CNA stole a check from a resident, wrote it out to "Diamonds and Pearls", cashed it at a Tops Market and kept the cash for herself.	1/26/10: Sixty days incarceration, three-years' probation, \$250 fine, \$785 restitution and ordered by court to surrender CNA certificate.
Riverdale Nursing Home	Bronx	Davis, Pamela, Licensed Practical Nurse	Defendant LPN struck a 75-year old resident in the back with her keys and kicked him in the buttocks.	2/8/10: Conditional Discharge with five days community service.
St. Catherine of Siena	Smithtown	LaForest, Roudlie, Certified Nurse Aide	Defendant CNA transferred resident without assistance and the resident fell, resulting in a fractured femur. Defendant put the resident back in bed without reporting the fall or getting medical assistance. Defendant then falsified reports about the incident.	1/21/10: Conditional Discharge.
San Simeon by the Sound	Greenport	Finley, Donald, Licensed Practical Nurse	Defendant LPN failed to administer a medication to one resident, failed to change a bandage for another resident, and failed to perform a blood sugar test for a third resident. Defendant falsely documented that he did perform the treatments.	1/8/10: Three years probation supervision with the conditions of probation that he surrender his LPN license and not work in the health care field in any capacity during the three year probation term, and submit to psychiatric, drug and alcohol conditions of probation. Two fines of \$750 each and a surcharge of \$205.
San Simeon by the Sound	Greenport	Naeem, Donna, Certified Nurse Aide	Defendant CNA punched an 86-year old resident in the head.	12/18/09: Conditional Discharge with special conditions being that she surrender her CNA certificate, or not renew it, and not seek employment in the health care industry in any capacity. License Surrendered.
Sunset Nursing Home	Boonville	Devoe, Angel, Admissions Coordinator	Defendant, as the Admissions Coordinator for the home, handled the patient incidental accounts. Using her position, she stole checks and cash, made the bookkeeping entries, but never deposited the amounts into the patient accounts. The total loss was over \$6,600.	2/3/10: One year conditional discharge and restitution of \$6,626.22.

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



Quarterly Enforcement Actions Against Nursing Homes

Federal Civil Money Penalties¹ Against 9 Nursing Homes: 12/1/09 – 2/28/10²

Name Of Home	Location	Survey Date	Amount
Atlantis Rehabilitation and Health Care Facility	Brooklyn	10/22/09	\$3,900.00 ³
Blossom North Nursing and Rehabilitation Center	Rochester	10/28/09	\$26,097.50 ³
Elant at Newburgh	Newburgh	9/2/09	\$139,100.00 ³
Hamilton Park Nursing and Rehabilitation Center (Victory Memorial Hospital SNF)	Brooklyn	9/25/09	\$1,300.00 ³
Morningside House Nursing Home	Bronx	10/26/09	\$55,412.50 ³
NYS Veterans Home at Montrose	Montrose	8/27/09	\$19,435.00 ³
Putnam Nursing and Rehabilitation Center	Holmes	11/9/09	\$49,302.50 ³
Stonehedge Health and Rehabilitation Center	Chittenango	10/22/09	\$5,200.00 ³
Union Plaza Care Center	Queens	9/25/09	\$31,297.50 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.

NY State Fined 16 Nursing Homes: 12/16/09 – 3/16/10¹

Name Of Home	Location	Date Of Survey	Amount ²
The Baptist Home at Brookmeade	Rhinebeck	9/26/08	\$4,000
Beechtree Care Center	Ithaca	12/12/08	\$6,000
Daughters of Jacob Nursing Home	Bronx	Combined 7/10/06, 10/10/06 & 3/6/07	\$6,000
Elderwood Health Care at Tioga	Waverly	12/12/08	\$2,000
Ellis Residential and Rehab Center	Schenectady	10/24/08	\$14,000
Grandell Rehabilitation and Nursing Center	Long Beach	Combined 2/27/08 & 10/20/08	\$4,000
Oceanview Nursing Home and Rehab Center	Queens	11/26/08	\$2,000
Park Ridge Nursing Home	Rochester	11/25/08	\$10,000
Pearl & Everett Gilmour HCF	Norwich	Combined 4/24/08 & 6/26/08	\$4,000
Presbyterian Home for Central New York	New Hartford	10/9/08	\$10,000
Resort Nursing Home	Queens	12/15/08	\$2,000
River Valley Care Center Inc.	Poughkeepsie	12/5/08	\$10,000
Sunrise Nursing Home	Oswego	12/11/08	\$2,000
Waterview Nursing Home	Queens	12/19/08	\$4,000
Whittier Rehabilitation & SNC	Ghent	12/30/08	\$4,000
Wingate at Beacon	Beacon	2/5/08	\$12,000

¹As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL Officer at 518-474-8734 or e-mail – 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 16 Nursing Homes 12/17/09 - 3/15/10¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Adirondack Medical Center Uihlein	Lake Placid	GG	1/22/10	DPOC, Inservice, DOPNA
Blossom South Nursing and Rehabilitation Center	Rochester	IJ/SQC	2/26/10	CMP, DPOC, DOPNA
The Brightonian	Rochester	IJ/SQC	2/12/10	CMP, DPOC, DOPNA
Center for Nursing and Rehabilitation	Brooklyn	IJ/SQC	1/29/10	CMP, Monitor, DPOC, Inservice, DOPNA
Clove Lakes Health and Rehab Center	Staten Island	GG	12/31/09	DPOC, Inservice, DOPNA
Countryside Care Center	Delhi	GG	12/21/09	DPOC, Inservice, DOPNA
Grandell Rehabilitation and Nursing Center	Long Beach	IJ/SQC	1/26/10	CMP, Monitor, DPOC, Inservice, DOPNA
Lawrence Nursing Care Center	Queens	IJ/SQC	3/10/10	CMP, Monitor, DPOC, Inservice, DOPNA
Oceanside Care Center Inc.	Oceanside	IJ/SQC	1/29/10	CMP, Monitor, DPOC, Inservice, DOPNA
Park Ridge Nursing Home	Rochester	IJ/SQC	2/5/10	CMP, Monitor, DPOC, DOPNA
Rome Nursing Home	Rome	IJ/SQC	1/15/10	CMP, Monitor, DPOC, Inservice, DOPNA
Sunrise Nursing Home	Oswego	IJ/SQC	2/5/10	CMP, DPOC, Inservice, DOPNA
Sutton Park Center for Nursing and Rehab	New Rochelle	GG	1/19/10	DPOC, DOPNA
Wayne Health Care	Newark	IJ/SQC	1/8/10	CMP, DOPNA
Westmount Health Facility	Queensbury	IJ	2/25/10	CMP, DPOC, Inservice, DOPNA
Whittier Rehab and Skilled Nursing Center	Ghent	GG	1/12/10	DPOC, Inservice, DOPNA

¹As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL officer at 518-474-8734 or e-mail – 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; Continued Deficiency (Cont'd Def): Deficiencies continue at post survey inspection and/or new deficiencies found.

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

Less is More *continued from page 3*

which scrutinizes use and monitoring of antipsychotics in nursing homes) and allows protection from exposure to the legal implications of inappropriate antipsychotic use. The methodology uses an interdisciplinary team approach where each discipline in the team uses its expertise to “focus on how to safely reduce antipsychotic medication or how to intervene in a safe way so that the medication would not have to be used.”

The Role of Individual Disciplines

The CNA is crucial to the success of this program as this individual has most of the front-line care giver responsibilities, including toileting, bathing and feeding residents. The CNA can not only point out “environmental triggers” to adverse behavior but also methods of calming a resident displaying adverse behavior.

The social worker liaises with the family and can often highlight pre-morbid personality traits which may have accentuated with advancing dementia. This may explain a particular behavior and enable the team to come up with a plan to mitigate the intensity of the adverse behavior and obviate the need for antipsychotic usage.

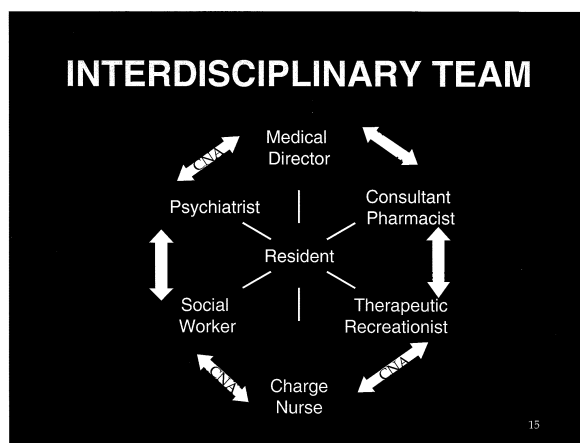
The consultant pharmacist is important in addressing appropriate gross and biochemical monitoring of antipsychotic usage and to remind the team to attempt gradual dose reduction (G.D.R). Biochemical monitoring may include fasting blood sugar and lipid profile. The antipsychotic may cause diabetes mellitus or impaired lipid metabolism also called dyslipidemia. EKG monitoring may suggest an impending cardiac rhythm disturbance.

The psychiatrist is able to clarify whether the medication is being used appropriately and when the tapering off of the medication is un-successful, for example if decompensations of adverse behavior occur after tapering. In this instance tapering is clinically contraindicated. The psychiatrist is also able to monitor the resident for gross adverse effects due to the drugs including tardive dyskinesia (an abnormal constant lip smacking movement) and EPS- an abnor-

mal movement of the extremities leading to impaired gait, reduced mobility and falls.

The medical director plays a pivotal role in changing the culture of the institution in order to effect this methodology. Without staff “buy in,” implementation is made difficult. The staff are constantly made aware that there is not an anti-aggression (or anti adverse behavior) drug that is not “off label” or investigational. Using the new FTAG 501 the medical director can implement a psychiatry policy that focuses on appropriate antipsychotic use and discontinuation where appropriate. The medical director can identify clinical champions of the program whose knowledge and support of the program will help ensure its sustainability.

The therapeutic recreationist often is able to describe activities which engage the patient and mitigate the frequencies and intensity of the adverse behavior. So, for example, a particular genre of music (e.g.: Nat King Cole) may be more calming and less dangerous than the use of a particular anti psychotic medication.



Summary of Outcomes

The accompanying diagram emphasizes resident focused care as applied to the methodology of antipsychotic reduction and the interaction of the various disciplines. As a result of this interdisciplinary

approach, there has been a tremendous, statistically significant, reduction in antipsychotic usage at Cobble Hill Health Center. This has been sustained since the introduction of the program in the summer of 2006 to the present.

Cobble Hill Health Center is a three hundred and sixty bed not for profit nursing home located in Brooklyn, NY. As a result of the program, there has been no concomitant increased distress of the residents. Neither has there been increase in psychiatric hospitalization nor increased caregiver (CNA) burden. There has been no increased financial cost to the institution. The methodology can be reproduced in any nursing home in the country and will improve quality of life of our frail, institutionalized elderly and perhaps reduce their mortality. □

Citizen Advocacy *continued from page 1*

I have been a professional advocate in nursing home reform for many years, consulting and speaking nationally to promote culture change (the movement to change the culture of nursing homes from one which is centered on the needs and expectations of the facility administration to one in which the residents and those working with them have control and power). But my citizen advocacy took off when I looked into the ratings of the three nursing homes within Manhattan Community District 7 where I live and then included all 21 nursing homes in Manhattan. I made spreadsheets to make information accessible visually, added staffing levels and financial information to see if trends were discernable.

To gauge and spark community interest, I made brief presentations at meetings of Community Board 7, at a meeting of a local political club, a tenant meeting and a church gathering. The Community Board's leadership acted skittish, but the people in the audience showed interest which was heartening. People phoned to thank me and ask what they can do to help. When LTCCC requested grassroots support for instituting quality pools in NY State's nursing home reimbursement system [see www.nursinghome411.org], I reached out to them and to others on my email list, forwarded the LTCCC action alert, urging them to email the Governor and to send the message to others on their email lists. Many wrote back, satisfied, saying they had done so and to ask that they be apprised whenever they can support progressive initiatives to improve nursing homes.

A neighbor, Paul Bunten, who also values grassroots participation, formed a non-profit called Westsiders for Public Participation, Inc. which appointed me to its Board of Advisors. The organization created a website, www.wppnyc.org, which will feature articles and links to progressive initiatives, including nursing home reform advocacy.

In addition to consumer advocates' bridging the gap between seasoned reformers and the public, other dimensions of public participation should be identified. Grassroots advocacy stems from the bottom up, bringing into view specific unmet needs of older people in our neighborhoods and of individual practices and initiatives of local providers. For instance, residential hospice care is seriously lacking on the Upper West Side, leaving frail people at the end of life too often at the mercy of hospitals. Stories abound of trau-

matic hospitalizations at the end of life, cruel, suffering-laden experiences, unnecessary tragedies and a shameless waste of precious resources. In response, we have been advocating for increased hospice care at home and residential hospice programs when needed.

When citizens study local nursing homes in detail, they will realize them to be a microcosm of larger issues that confront us as a nation, and from a local perspective, a microcosm of troubling issues that confront our communities even more broadly. By surfacing hidden behavior of local nursing homes—and probably of many other large institutions—citizens will discover how to reclaim their dormant democracy, so that government represents the people's interest on a level that's at least on a par with that of the powerful and well-heeled.

Nursing homes—whether non-profit or for-profit—are primarily supported by American tax dollars and are fully accountable to the American people for how well or ill they serve the oldest among us and for how well or how ill they allocate public revenue to achieve those ends. Every nursing home is a public trust.

An individual may feel powerless to improve 16,000 nursing homes nationally on behalf of the 1.6 million older Americans who live there. But when poor care exists in one's own neighborhood, citizens can strengthen oversight, call for greater transparency, and promote legislation that improves conditions. They can notify their state's health department and urge the Long Term Care Ombudsmen to report serious issues, to increase transparency and put their state department of health on notice about issues. And when state surveyors fail to identify egregious trends, citizens can report their concerns on up the state's accountability ladder. It is a mistake to regard the powerful nursing home industry as a force of nature beyond the capacity of citizens to tame or influence.

According to Professor Charlene Harrington, one of the top researchers on nursing home issues in the country, "It is essential to the nursing home market place that there be an active advocacy system for consumers to counter the heavy political and legal power of the nursing home industry." In addition, citizens will discover that their advocacy on behalf of relatives, friends and neighbors in local nursing homes will increase the well-being of their communities as a whole. By helping create equitable social environments for nursing home residents, the public will, in turn, create more equitable social environments for themselves. □



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Assemblymember Jeffrey Dinowitz
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