



# M<sup>LTC</sup>onitor

SUMMER 2005

THE LONG TERM CARE ADVOCATES' NEWSLETTER

## Part D Drug Plans and Nursing Homes

On March 16, 2005, CMS (the federal Centers for Medicare & Medicaid Services) released guidance for plans that will be providing medication to Medicare and Medicaid recipients under the new Medicare "Part D" drug plan. The guidance sets forth requirements and "expectations" for the providers, who will be formulating policies for the implementation of pharmacy services for long term care facilities. The guidance, which gives plans considerable leeway in terms of coverage and services, does not adequately address the needs of residents that we and other advocates have raised across the country (See article in the Spring 2005 edition of *The Monitor*).

Following is an overview of some of the most pertinent areas of the CMS guidance that we have identified as being of special concern to nursing home residents:

### LTC Pharmacies

Part D plans will be required to offer a contract to any pharmacy willing to participate in its LTC pharmacy network as long as the pharmacy is capable

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## LTCCC Releases Report On POE and *Olmstead*

The past three issues of *The Monitor* have included articles discussing LTCCC's concern and interest in New York State's plan to implement a single point of entry (POE) proposal to help consumers access the long term care system. LTCCC responded to this proposal in writing to the state and created a subcommittee to analyze the proposal, present a strong, cohesive consumer voice on the issue and make recommendations to protect consumer access and independence.



As part of our activities, the Coalition has been conducting research into national developments and issues surrounding implementation of a POE for long term care. This will help us gain insights into the experiences of other states that have proposed or already implemented such systems. In addition, since any POE must contend with the groundbreaking 1999 Supreme Court ruling in *Olmstead v. L.C.*, which requires that long term care be given in the least restrictive environment possible for each individual consumer, the report includes experiences of states in complying with this ruling. *Olmstead* has the potential to alter the way states approach the provision of long-term care services because of its holding that the unjustified institutional isolation of people with disabilities is a form of discrimination under Title II of the American with Disabilities Act. The court declared that states are required to make "reasonable modifications" to publicly funded programs to accommodate qualified individuals who desire to live in the most integrated setting.

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## Part D Drug Plans...

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of meeting performance, service criteria and state and federal rules. CMS “expects” that each LTC facility will select one or possibly more than one eligible network LTC Pharmacy to provide Medicare drug benefits to its residents. However, CMS does say that a facility can continue to contract exclusively if it chooses.

### Formularies

Although the guidance states that plans must accommodate the needs of long term care residents by providing coverage for all medically necessary medications at all levels of care, it does not require plans to cover the drugs an individual is already taking. Plans are required to formulate an appeals and exceptions processes for individuals to try and get access to such medication if not covered.

Thus, long term care residents or their physicians may have to go through a lengthy exceptions and appeals process to receive their medications, or switch medications, based upon what their particular plan is covering. Furthermore, plans are free to change their formularies. For nursing home residents, who are often on a number of medications, this might mean that none of the plans available to them cover all of their medications, and they might be in the position of having to deal with one or more appeals processes, while at the same time dealing with new drug interaction, allergy and other issues. In situations where residents have an immediate need for a non-formulary Part D drug, CMS “recommends” that the plan consider one-time temporary or emergency supply process, but does not require it.

### Transition

CMS again merely “expects” the plan’s transition process will highlight procedures and time frames to ensure a seamless transition for enrollees who are LTC

facility residents. However, while stating that it is important that the transition process take into account the unique needs of residents of long term care (LTC) facilities who enroll in a new Part D plan, CMS again does not mandate any rules. CMS only “recommends” that Part D plans develop and implement a policy and procedures that ensure the beneficiary’s drug history is known to the Part D plan when there has been a change in the beneficiary’s LTC pharmacy provider. CMS guidance says that, “Plan sponsors may need to provide a temporary “first fill” supply order for a limited quantity of medication prescribed by the attending physician until an appropriate

liaison between the facility, the attending physician, and the plan’s LTC pharmacy on behalf of the resident can be achieved.” In one instance, CMS does require rather than just expect a consumer protection: that plans ensure

that LTC pharmacies in the plan’s network that have relationships with LTC facilities work with those facilities prior to the effective date of enrollment to ensure a seamless transition of the facility’s residents. □

**“CMS guidance to plans  
does not address the needs  
of nursing home residents.”**

**WHAT YOU CAN DO!**

Please write or email Mark McClellan, the head of CMS:  
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Let him know that you want CMS to require plans to meet resident needs and not merely “recommend” or “expect” that they will do the right thing for consumers. Use the points above to bring specific issues to his attention.

# UPDATE ON MEDICAID – FEDERAL AND STATE

## Federal Budget: Phone Calls and Emails Work!

Senator Gordon Smith's (R-Ore) and Senator Jeff Bingaman's (D-NM) amendment to block proposed \$14 billion in Medicaid cuts passed the Senate 52 to 48! The Smith-Bingaman Amendment also created a commission to study Medicaid. This commission would review and make recommendations with respect to the long-term goals, populations served, financial sustainability, interaction with Medicare and safety-net providers, and the quality of care provided. The Commission would have one year to hold public hearings, conduct its evaluations and deliberations, and issue its report and recommendations to the President, the Congress, and the public.

Thanks to all of you who heard the call and let your Congressional representatives know that you did not want Medicaid cut. Thanks for calling or emailing by using our Citizen Action Center. You really made a difference!

Listen to what Senator Bingaman's office said about our action: "I have not seen anything like this in years. Phones are jammed and people are really activated. It is wonderful to see..."

## NYS Wins Conditional Approval for Medicaid Waiver

On March 16, Governor Pataki announced that New York has received conditional approval for a new federal Medicaid waiver (called, the Federal-State Health Reform Program, F-SHRP) that would allow the state to keep \$1.5 billion of Medicaid savings over the next three years. In return, the state would have to show that it will save at least that amount of money for the federal government during the same period of time. Though many news reports have characterized this as a "win" for New York, it is crucial to remember that it is more like an advance, to be paid back with a reduction on money spent providing Medicaid services.

In order to elicit savings, the Governor proposes to "restructure and reform" the health care system by:

- Increasing home care and independent living options
- Closing hospitals and nursing homes with "excess capacity"
- Decreasing money spent on medications by imposing a "preferred drug list"
- Trimming benefits and increasing co-payments for poor and disabled people
- Revamping benefit structures for "optional" populations (Most nursing home residents are

part of the "optional" population)

- Phasing in state assumption of local Medicaid responsibilities

Because these changes are not currently permitted under Medicaid rules, the state needs the waiver in order to put these changes into effect. These changes will also need approval of the state legislature.

LTCCC is concerned that Medicaid recipients in our state will go without needed care to pay for these savings. While we support certain ideas, such as increasing community-based and independent living options, we are concerned that in order to save money consumers will be put at risk. Watch our website ([www.ltccc.org](http://www.ltccc.org)) and future LTCCC newsletters for more information and ways to protect the vulnerable population of our state. ☐

**"I have not seen anything like this in years. Phones are jammed and people are really activated.**

**It is wonderful to see..."**

**WHAT YOU CAN DO!**

**Contact your leaders in the New York legislature and urge them to reject any waiver proposal that diminishes vital services for New Yorkers who rely on Medicaid services. See the back page for contact information, or visit our Citizen Action Center at [www.ltccc.org](http://www.ltccc.org) to find out who your representatives are and take action.**



# LTCCC Releases Report...

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## Background

LTCCC's interest in the POE began in May 2004 when the NYS Department of Health requested information from interested citizens and organizations regarding the implementation of a single point of entry system in New York State. After sending our response, we began to further explore the intricacies of such a system so that we may better report to our members and readers whether this system might be beneficial or harmful to NY State residents. Importantly, we created the POE/Access to Care Committee and embarked on extensive state and national research so that we could monitor developments in New York and be as "pro-active" as possible in protecting consumers. One of our major concerns has been that New York State's POE might focus on cutting costs rather than assessing needs, providing information, and aiding consumers in making choices that are good for them.

## Report Overview and Findings

The report, which is available at no cost on our website ([www.ltccc.org](http://www.ltccc.org)) details (1) the strengths, weaknesses, and experiences with POE systems in other states, (2) a national review and assessment of states' compliance with *Olmstead* and (3) the results of our survey of consumer groups and ombudsmen in states with a POE. The report contains recommendations to help achieve the promise of an effective POE while protecting the rights of our vulnerable citizens who need long term care.

The main body of the report consists of findings from our research of state laws and policies, as well as academic resources. Adding to these findings is information we learned first hand by attending NYS Office of Aging "listening sessions" and attending an Albany conference sponsored by NYS providers.

**Analysis of Poe Across The U.S.:** We found that, over the past fifteen years, policymakers across the country have considered and/or implemented a single point of entry (POE) system for long term care. A commonly stated official goal of all the systems is to make it easier for consumers to receive long term care services by enabling them to access these services through one agency or organization. However, LTCCC is concerned that another equal or greater goal for states has been to reduce costs. Currently, 43 states have a POE system for various service categories. Twenty four of those states have a POE system for long term care. The report provides an overview of experiences in these states. It

presents two in-depth case studies of the systems in Colorado and New Jersey. We selected these states for further investigation because they represented distinct aspects of our society, both as a country and in our homestate, New York. New Jersey is highly populace and diverse while Colorado is rural and relatively homogenous.

**Study of Consumer Group Perspectives:** The report also includes a special section with highlights from a study that LTCCC conducted in which we interviewed consumer advocacy groups (CAGs) and Long Term Care Ombudsman Program offices (LTCOPs) in the states that already have a POE for long term care. This study was initiated with considerable help from the National Citizens' Coalition for Nursing Home Reform which provided national lists of CAGs and LTCOPS and publicized the study to these groups beforehand. The survey identified over a dozen leaders of these community

groups, many of whom spent an hour or more with our surveyors discussing their assessment of the POE in their state, their involvement in its development or implementation and their insights into the positive and negative

aspects of their state's plan for consumers.

The survey results indicate that there is a great deal of diversity in the ways states are implementing a POE for long term care. Ninety percent of survey participants believed that their state's POE made it easier for consumers to get services - a critical issue for consumer advocates. Approximately one third of the groups we spoke to reported that they had been involved in the planning of the POE in their state. The same number reported being directly involved in its implementation.

Some of the interesting insights we heard included participants reporting that their state had instituted a "no wrong door policy" in which consumers were able to get comprehensive information about their care options from a variety of resources. One hundred percent of respondents felt that the POE had resulted in more consumer choice. One state has reportedly sent 3,200 nursing home residents back to the community, under a POE that operates under a "money follows the person" arrangement. On the negative side, a few respondents noted that if there is a long wait for services, elderly clients have no other choice but to enter nursing homes.

**Olmstead Implementation:** Our research into states' experiences complying with *Olmstead*, found that many states have been working towards *Olmstead* compliance by appointing task forces, evaluating their package of services and creating a comprehensive working plan to ensure that people are placed in the most integrated setting possible.

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“There is a great deal of diversity in the ways states are implementing a POE for long term care.”

## LTCCC Releases Report...

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While New York's *Olmstead* task force has held meetings and several public forums over the last two years and hopes to present a report to the governor by the end of the year with their recommendations, there has been little concrete progress. Valerie Bogart, director of the Evelyn Frank Legal Resources program at Self Help Community Services, Inc., points out that, "...a significant part of the committee work appears to be in the hands of state agency staff members who work for the designated state commissioners. It is not known whether teams of advocates for older persons or persons with disabilities have been invited to participate in these working committees."

Our research found that change among the states has been a slow process and many lawsuits related to *Olmstead* have been brought across the country to impel implementation. Most of these court decisions address the use of Medicaid dollars, since the Medicaid program is the largest public financier of long term care services in the country and provides either partial or full support for two-thirds of all nursing home residents receiving such services. Thus, *Olmstead* compliance within the Medicaid program is the primary focus of each state.

The compliance within Medicaid is especially relevant because the program has an inherent institutional bias that makes it easier for recipients to receive care through an institution than in less restrictive settings like the home. Part of this institutional bias is rooted in the fact that Medicaid law requires the provision of institutional care for all eligible beneficiaries but community-based services are optional. Yet, many individuals desire to remain in their homes rather than enter institutions and it is estimated that 15 to 30 percent of nursing home residents could be cared for at lower levels of care. In fact, *Olmstead* requires helping people get care in the least restrictive setting.

Unfortunately, our research indicates that there are many barriers to achieving care in the least restrictive setting. Some are specific to Medicaid and others are not. Appropriate housing, access to transportation, cost and access to long-term care staff all affect the availability and feasibility of receiving home and community-based services. Many states are exploring the use of Medicaid waivers to enhance provision of home and community-based services. New York State has just received provisional support for a waiver which has as one of its goals to increase home and community based care (see, "Update on Federal and State Medicaid" in this edition of *The Monitor*).

### Key Recommendations:

- Consumers should actively engage their state policy makers and seek to be part of the process determining

the activities and functions of the POE system to ensure quality, effective, independent care;

- A POE should provide consumers with multiple points to get information and assessment, and be capable of transferring information easily across the system;

- Consumers must be effectively informed about the POE, in multiple languages and formats, and helped to effectively utilize the system;

- A uniform, state determined evaluation/assessment tool is essential;

- Quality control methods and accountability for administering agencies must be developed; and

- Consumers should engage policy makers to ensure that, as systems are developed, they fulfill the mandate of the *Olmstead* decision.

This report is now on our website ([www.ltccc.org](http://www.ltccc.org)) for free download and will be distributed widely to coalition members and New York State policy makers. □

## Update on Assisted Living Law

As readers of *The Monitor* know, legislation mandating assisted living licensure was signed into law on October 26, 2004. Prior to passage of the law, assisted living residences in New York were either licensed as adult homes or were unlicensed. The law is now in effect and requires all unlicensed assisted living to apply to become licensed adult homes or enriched housing. According to Department of Health (DOH) staff, some are already doing so, using the current adult home application. Some are asking to meet with DOH to discuss how they should prepare.

Once a residence is licensed it can then apply for additional certification to call itself assisted living and provide additional services such as aging in place or for an enhanced certificate to provide special care for people with Alzheimer's or dementia. DOH staff are working on developing applications for assisted living and the enhanced certificates. At the same time, the Assisted Living Task Force is beginning to meet and to fulfill its mandate under the new law. Primary among its responsibilities will be to formulate standards for the enhanced certification upon which DOH will base its regulations of these facilities. The Task Force will also "update and revise the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence." At press time, the Assembly had not yet appointed its members. LTCCC's Executive Director, Cynthia Rudder, had been nominated and is awaiting confirmation. Once the regulations are promulgated and application procedures finalized, facilities that wish to offer assisted living or enhanced services will be given a set time period to submit an application. □



# ENFORCEMENT ACTIONS AGAINST NURSING HOMES<sup>1</sup>

## STATE ENFORCEMENT ACTIONS AGAINST NURSING HOMES: 12/16/04-03/15/05

### The State Fined 15 Nursing Homes

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT
A. Holly Paterson	Uniondale	09/07/99, 10/02/00, 10/15/03, 04/15/04	12,000
Auburn NH	Auburn	04/08/04	2,000
Baptist Health Nursing & Rehab	Scotia	05/30/03, 03/24/04	3,000
Central Suffolk Hosp. SNF	Riverhead	06/23/04	2,000
Delaware Cty. Countryside Care Center	Delhi	06/20/02	2,000
Ellis Ctr. For LTC	Schenectady	09/04/02	2,000
Fulton Commons Care	E. Meadow	10/01/03	3,000
Mary Manning Walsh	New York	05/13/02, 09/20/03	3,000
Mercy Health & Rehab Ctr.	Auburn	05/26/04	6,000
Monroe Comm. Hosp.	Rochester	08/08/01, 10/09/03	3,000
Newark Manor NH	Newark	02/11/04	2,000
River Mede Health & Rehab Ctr.	Binghamton	07/09/04	10,000
Schuyler Hosp. LTC	Montour Falls	02/27/04	3,000
Union Plaza NH	Flushing	07/30/04	2,000
Westgate NH	Rochester	03/03/04	2,000

<sup>1</sup> As reported by the Department of Health (DOH), and The Center for Medicare and Medicaid Services (CMS). These lists will be posted on LTCCC's web-site every three months, two to three weeks after the end date listed above. If you want to know why a facility was cited and/or fined by DOH, you can get a copy of the Statement of Deficiencies (SOD) from the Department of Health. You will be charged \$.25 a page. Call FOIL Officer - 518-474-8734 or e-mail - nhinfo@health.state.ny.us. Ask the Department to let you know how much it will cost to make sure that you can afford the amount. If you cannot, ask if you can look at the SOD in your regional office. If you want to get a copy of the CMS citations, call FOIL Officer - 212-616-2318.

In addition to the actions listed below, the following nursing homes may have fines pending. 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) - Have received G's in two consecutive surveys.

### The State Took Other Actions at 8 Nursing Homes

NAME OF HOME	LOCATION	IJ, SQC or G	SURVEY DATE	ACTIONS <sup>2</sup>
Broadlawn Manor	Amityville	GG	12/30/04	DOPNA, POC
Fairport Baptist Home	Fairport	GG	02/10/05	DOPNA, POC
Far Rockaway	Far Rockaway	SQC	01/11/05	DOPNA, POC
Fort Hudson Nurs. Center	Fort Edward	IJ/SQC	01/24/05	DOPNA, State Monitor
Jennifer Matthews	Rochester	GG	01/14/05	DOPNA, POC
Northwoods Rehab And ECF, Cortland	Cortland	GG	01/04/05	DOPNA, POC, In-Service
The Ctr. for Nurs. & Rehab., Birchwood	Birchwood	GG	01/18/05	DOPNA, In-Service
Willow Pt. NH	Vestal	GG	01/28/05	DOPNA, POC, In-Service

<sup>2</sup> 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 (POC): 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.



## FEDERAL ENFORCEMENT ACTIONS AGAINST NURSING HOMES: 12/16/04-03/15/05<sup>3</sup>

### The Federal Government Imposed Civil Money Penalties (CMPs)<sup>4</sup> On 5 Nursing Homes

NAME OF HOME	LOCATION	DATE	AMOUNT
Fieldston Lodge	Riverdale	February 15, 2005	\$109,849
Lake Shore	Irving	February 17, 2005	\$ 7,150
Morris Park	Bronx	March 3, 2005	\$82,400
Morningside House	Bronx	March 10, 2005	\$15,990
Bellhaven Center	Brookhaven	March 11, 2005	\$18,500

<sup>3</sup> In our last edition, this page listed fines "imposed" and "final determinations." Only information on final determinations is available under Freedom of Information laws. Thus, we will only be listing CMPs that are "Due and Payable" and we are calling them "imposed."

<sup>4</sup> Civil Money Penalties (CMPs) - States can collect CMP funds from nursing homes that have failed to maintain compliance with Federal conditions of participation in Medicare and Medicaid programs. At this time, New York State does not collect such funds because we have only recently changed a law that would have put us in violation of federal law. The state will begin imposing these in the near future. These CMPs are now Due and Payable to the federal government.

## LTCCC Transitioning to New Leadership

After serving for over two decades as the Coalition's leader, Cynthia Rudder will be stepping down as Executive Director on June 30, 2005. She will be continuing on a part time basis as our Director of Special Projects. Richard Mollot, who has been LTCCC's Associate Director for over two years, will become the new Executive Director of the organization.



Cynthia has been a leader on long term care issues in New York and nationally, fighting for consumer rights and protections and leading the Coalition as it grew to address not only critical nursing home issues but also managed care, assisted living and other issues affecting the care and treatment of the elderly and disabled. She has been a tireless advocate for the most vulnerable among us and a renowned expert on nursing home care and quality of life, assisted living and other long term care issues. Undoubtedly, she has had a positive impact on the lives of thousands of people.



*Please join us in thanking Cynthia for her tremendous accomplishments and wishing her well as she moves ahead. We will be hosting a gala in the fall to celebrate her work. If you would like more information on the gala, or are interested in joining the planning committee, please contact Barbara Lynch at 212-385-0355 or [barbara@ltccc.org](mailto:barbara@ltccc.org). □*

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### 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 518-455-4100.

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

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

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