LTCCC
LONG TERM CARE COMMUNITY COALITION

MONITOR

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

www.ltccc.org • SUMMER 2007

Assisted Living Regulations Published

LTCCC Assisted Living Committee Focuses on Affordability

The assisted living regulations, which will put the 2004 assisted law into effect, were published in the State Register on March 28th. The state will accept public comments until May 14, 2007. The published regulations retain all of the protections put in place by the Department of Health and the Office on Aging. As readers of *The Monitor* know, we have fought for three years for these protections. We hope that the final regulations, which will be promulgated after the

"We must make sure that our support is heard by the State."

public comment period, will preserve these protections as well as add those safeguards not yet in place.

There will be much opposition to a number of these protections. We must make sure that our support is heard by the state. One of the most important safeguards for those residents hoping to "age-in," by living in an Enhanced Assisted Living (EALR) or a Special Needs Assisted Living Residence (SNALR), is the requirement that the residences must have a licensed nurse on duty and on-site 16 hours a day, seven days a week with a registered professional nurse on duty and on-site, for eight of the 16 hours per day, five days a week; and a registered professional

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In This Issue...

LTCCC Holds CMP Partnership Summit

In early 2007 LTCCC convened a CMP Partnership Summit, to discuss the use of nursing home civil monetary penalties (CMPs) and state fines as part of a LTCCC project funded by the New York Community Trust. The summit brought together representatives of a number of consumer advocacy

organizations as well as the state and local ombudsmen to identify consumer priorities for the use of CMPs and potential projects and activities that the funds could be used for, which would benefit nursing home residents.

As reported in the summer 2006 edition of *The Monitor*, LTCCC's national study on civil money penalties indicated that there are significant monies available but that the monies are not always used appropriately (see www.nursinghome411.org for report and consumer materials). Because CMP monies must be used for specific, resident-centered purposes (such as protecting residents during a nursing home closure or for projects and activities that improve resident care and quality of life) we focused on identifying projects that benefit residents and ways in which stakeholders can be involved in their states in both developing proposals for the use of the monies and bringing accountability to the entire process.

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Regulations Published ...

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nurse on call and available for consultation 24 hours a day, seven days a week, if not available onsite. This is crucial for assessment and monitoring. Among the other protections that must remain in place is the requirement that an EALR and a SNALR must let every resident know, by a conspicuous posting in the residence, on at least a monthly basis, of the then current vacancies available, if any, under the operator's enhanced and/or special needs assisted living programs. Thus, a resident receiving basic ALR services can know if a place if available for him if he becomes more dependent.

Public comments should also state that some of the rules should be changed or added to. Because a basic ALR applying for an enhanced certificate can decide how many enhanced beds they want to have (perhaps making the ability to "age-in" moot due to a limited number of beds), the EALR application should describe how the applicant decided how many enhanced beds they would need (and are applying for) in order to meet the needs of the basic ALR residents they have. They should discuss what will happen to those basic ALR residents who need enhanced care if there are no vacant enhanced beds. In addition, care plans should be reviewed or revised upon the request of the resident or resident's family; complaints made by resident or family councils should be responded to, in writing, within 21 days. While the regulations have a good definition of "self-directing" residents, they do not state that non-self-directing residents must have any medication they take "administered" by a licensed nurse.

One of the most important things that should be added to the rules is that a resident who is receiving basic ALR services in a residence with an enhanced certificate may remain in his room or apartment if he needs enhanced services; the residence must not be permitted to move him to another location in the residence.

Affordability

The LTCCC Assisted Living Committee has focused at its last few meetings on how to make assisted living affordable. Discussions have focused on a number of principles: appropriate assisted living must be accessible to all New Yorkers; Medicaid funds can be saved by making appropriate placement in assisted living possible for those individuals who might otherwise have to go to a nursing home due to lack of private funds; and only those residences that practice the philosophy of assisted living as stated in the 2004 law, which emphasizes aging in place, personal dignity, autonomy, independence, privacy and freedom of choice, should receive Medicaid reimbursement. Appropriate assisted living models mean those that are non-institutional, integrated into the community, comply with the Americans with Disabilities Act, and encourage resident independence and autonomy. These discussions will continue.

Please go to our Citizen Action Center at www.ltccc.org and send a message to the state supporting the rules, changes and additions in the final assisted living regulations. ❑

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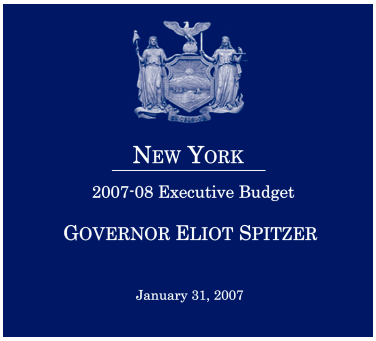
LTCCC Supports Governor Spitzer's Proposed Budget

Following is a memo LTCCC issued during the budget debate.

The Long Term Care Community Coalition, a statewide coalition of over two dozen consumer, civic and professional organizations fighting for better nursing home care for over 25 years, supports Governor Spitzer's budget proposals affecting Medicaid reimbursements to nursing homes. We agree that our health care system needs reform. It must move from an "institution first" to a "patient first" system. More investments must be made in home and community based care to make sure that long term care consumers have the ability to remain in their community if they so choose. At the same time, it is crucial that cuts or changes to nursing home reimbursements are done carefully so that those who depend on nursing home care now (or who will in the future) are protected.



Need to Make Sure Cuts Are Borne by Institutions Not Patients

We urge the Governor and Legislature to make sure that the proposed cuts such as elimination of the nursing home inflation factor and nursing home case mix enhancements for Medicare residents are borne by the institutions and not the nursing home residents. In the past the institutions have passed on any cuts or fees to the resident and his/her family. For example, many nursing homes have always charged private pay residents the 6 percent nursing home gross receipts assessment saying that they had to because the state is charging them.

In response to the current proposal, Carl Young,

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Nursing Home Residents' Legal Rights

Information and Workshops

Nursing homes should provide a safe secure place for elderly residents. However, people in nursing homes sometimes encounter problems. Similarly, family members or individuals with loved ones in nursing homes have concerns about resident treatment in such facilities. There are several resources for consumers who are unsatisfied with the care provided by the nursing home. It is important that consumers know their legal rights and options when it comes to long term care. LTCCC plans to conduct workshops to provide information for consumers and legal advocates surrounding nursing home issues.

The purpose of the workshop is to provide a background of legal resources and potential claims for consumers who have faced problems with nursing home facilities, and serve as a reference for legal organizations that may not be familiar with nursing home residents' legal rights.

There are a number of laws protecting residents against nursing home abuse. Under the federal Nursing Home Reform Law of 1987 (OBRA '87) all nursing home residents are entitled to receive quality care and live in an environment that maintains the quality of their physical and mental health. This includes freedom from neglect, abuse, and misappropriation of property or funds. Though the law pertains only to nursing homes that receive federal funding through Medicaid or Medicare, because the vast majority of facilities are certified to receive reimbursement for Medicaid or Medicare services, the law has served as a de facto industry-wide standard. In addition, some states, such as New York, have adopted the federal law as regulations for all its nursing homes.

Several states have enacted statutes commonly known as "nursing home bills of rights" which grant specific rights to nursing home residents and also provide a private right of action (the right to bring a lawsuit), against the home for violation of their rights. However, it is important to know that the standards set forth in the federal law are the minimum, to which every nursing home in the country can (and should) be held accountable. State laws or resident "bill of rights" can only enhance the federal standards.

In general, any person who suffers injury or loss as a result of the failure of a nursing home to exercise proper care in its treatment of a resident may bring an action against the nursing home and recover against the nursing home for such injury or loss. The owner of the nursing home or anyone whose conduct contributed to the resident's injury (including employees and medical professionals) may be held liable. There are several causes of action – bases for suing – for which a person can bring a claim against a nursing home.

Consumers may be hesitant to seek an attorney's

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Proposed Budget...

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President of the New York Association of Homes and Services for the Aging, was quoted in numerous papers as saying: "The only place homes really have flexibility is staffing, so that is what would be affected." We believe that most nursing homes have flexibility to cut administrative expenses and profits or surpluses. Over 90% of NY State nursing homes are now staffed below safe levels. This is one of the principal reasons why so many nursing home residents suffer from poor care and living conditions. To threaten cutting staff is outrageous.

As our new governor has indicated, providers and provider associations spend millions of dollars on lobbying and advertising. Exorbitant salaries for administrators are not uncommon. Though nursing homes overwhelmingly rely on public funding – and serve a critical public need – little is known about how most of them spend their money. As a result there is little accountability. Often, it is only when a scandal is uncovered that the public learns about self enrichment or sweetheart deals with contractors for goods and services.

It is clear the residents will suffer unless the Governor and the Legislature make it clear that business cannot go on as usual. Institutions have always cried poverty. Yet, it is unclear whether nursing homes that demonstrate a bottom line loss are losing money because of Medicaid cuts or because they are mismanaged or have inappropriate expenses, such as those mentioned above. We have accepted nursing home provider accounting of losses for too long.

Do Not Permit Institutions to Cut Direct Care

In order to make sure that the consumer does not suffer if the proposed cuts are passed, we urge the Governor and the Legislature to consider a number of protections: A law requiring ratios of nursing home staff to residents needing care is needed now more than ever; vulnerable residents will suffer if facilities are permitted to cut staffing. A cap on administrative costs – sensible given both the amount of public money that goes into nursing homes and the critical public health role they play – would likely provide more funds to cover potential cuts without cutting staff.

The Governor's proposed changes to nursing home reimbursement and investment in home and community based care should be given a chance to succeed, so long as we make sure consumers are protected by passing requirements forcing nursing home providers to bear the costs of the cuts by cutting profits, surpluses and administrative costs, not direct care staffing or other resident services. ❑

Residents' Legal Rights...

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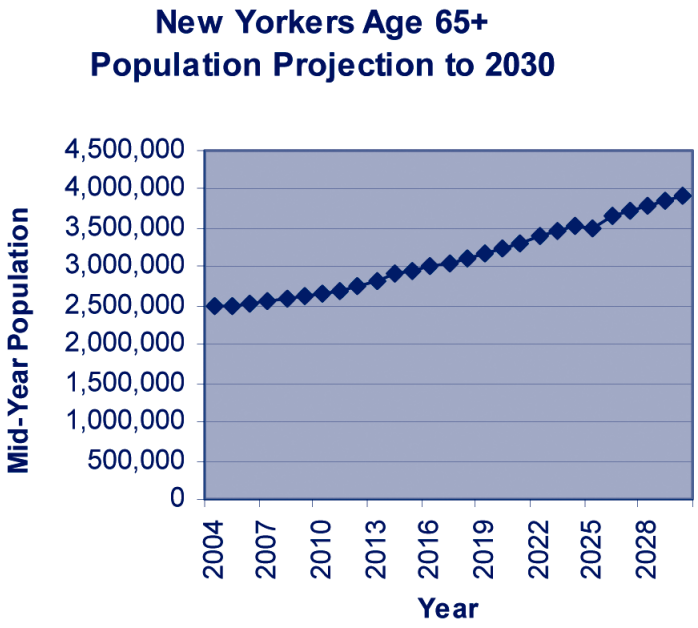
advice when there is a problem. Fear of retribution is a major impediment in filing a complaint within the nursing home system or in court. Cost is another impediment to filing lawsuits. However, if there is suspicion of abuse or neglect of a nursing home resident, the benefits of filing a suit against the facility may be worthwhile. LTCCC published a report on legal protections for nursing home residents, including ideas and information on innovative practices that have worked around the country to protect residents. The report and separate resources for attorneys, consumers and ombudsman are available on our Website, www.nursinghome411.org. Following are some of the legal issues discussed: *Negligence* – A claim of negligence is a logical cause of action in nursing home cases since it requires a duty; violation of that duty; proximate cause; and damages. *Wrongful death* – A claim brought on behalf of the deceased person. *Intentional tort* – A deliberate act that causes harm to, for which the victim may sue the wrongdoer. Examples in a nursing home include sexual assault, assault and battery. In this situation, the nursing home would likely be responsible for the actions of an employee. *Negligent hiring and supervision* – An ongoing problem in nursing home cases is that, despite specified regulations to the contrary, nursing homes remain understaffed as to all employees and particularly understaffed in the more expensive positions, such as Registered Nurses and LVNs. Nurse aides with poor salaries, too little training and little experience provide almost all of the care. Therefore, negligent hiring and supervision of personnel is an ongoing problem.

LTCCC is offering free workshops for people who provide advice and counseling to nursing home residents and their families and friends. If you are interested in attending a workshop please email info@ltccc.org or call 212-385-0355. Space is limited so please call as soon as possible if you would like to attend a workshop. ❑

Mandate Nursing Home Staffing Ratios Now!

In 2003, two nursing home residents were admitted to a nursing home in New York with pressure sores. Both residents were given care plans that included regular skin assessments, turning and positioning. Within months, the residents developed multiple pressure sores and one resident developed renal failure partly caused by skin breakdown. The state inspector attributed the failure to administer care plans to a "systems breakdown" caused by staffing issues including lack of communication, high turnover and use of agency staffing.

Staffing ratios and quality of care are strongly related. Residents need staff for nutrition, disease management and turning and positioning to prevent pressure sores. The 1996 Institute of Medicine report, "Nursing Staff in Hospitals and Nursing Homes: Is it Adequate?" found that staffing ratios have a great effect on the nutrition of nursing home residents. Nursing assistants in understaffed nursing homes are unable to patiently feed each resident. As a result, residents are more likely to suffer from dehydration, malnutrition and associated conditions.



Reports linking quality of care and staffing ratios date back to at least 1971. The US Government Accountability Office has issued multiple reports calling for increased staffing ratios. New York nursing homes have particularly low levels of staff. The Center for Medicare and Medicaid Services (CMS) study, "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II Final Report" found that 98% of nursing homes in New York have nursing levels that fall in the range where quality of care was shown to suffer.

Now is the time for legislation to mandate staffing ratios on both state and federal levels. The over 65 population is increasing both nationally and in the state. A population projection by the US Census Bureau shows that the population of people in New York age 65 and older will increase by 60% between 2004 and 2030. Not only is the aging population growing, but the diabetes epidemic will also increase the number of older people who will need help with activities of daily living and disease management-services provided by nursing homes. We must ensure that nursing homes will have sufficient staff to care for our aging population as they grow in number and dependency.

Legislation to require ratios has not passed nationally or in this state despite the numerous reports linking staffing ratios with quality of care. Over the past six years, bills mandating safe staffing have been pending on both the state and federal levels.

The arguments against mandating staffing ratios include the perceived high cost of staffing and the nursing shortage. However, numerous studies have shown that increasing staffing ratios significantly reduces operating costs and that understaffed homes in fact contribute to the nursing shortage: it may not be that there are no nurses available, but rather that so many refuse to work in nursing homes because of the poor working conditions prevalent in understaffed homes.

A report issued by the LTCCC in 1998 detailed "91 Ideas for Reducing Costs, Enhancing Revenue, and Maintaining Quality in Nursing Homes," details how bladder training reduced rates of incontinence which reduced the costs of laundering soiled sheets and supplying diapers (in addition to restoring dignity to residents). A 2006 study in the *Journal of the American Medical Directors Association*, "Effects of continuous activity programming on behavioral symptoms of dementia" found that continuous activity programming and additional staff decreased the use of psychotropic medications and led to further

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Enforcement Actions Against Nursing Homes

State Fines Against 13 Nursing Homes: 12/16/06 – 3/30/07[1]

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT[2]
Arbor Hill Care Center	Rochester	5/3/05	$1,000
Baptist Health Nursing and Rehab Center	Scotia	8/4/06	$2,000
Bellhaven Nursing and Rehab Center	Brookhaven	3/31/06	$1,000
Holliswood Care Center	Queens	2/27/06	$2,000
Mount Loretto Nursing Home	Amsterdam	6/8/06	$2,500
Northeast Center for Special Care	Lake Katrine	2/17/06	$1,000
Norwegian Christian Home and Health Center	Brooklyn	1/21/05, 2/6/06	$2,500
Providence Rest	Bronx	4/13/05, 4/24/06	$3,000
The Highlands at Brighton	Rochester	3/24/05, 4/21/06	$1,500
The Waters of Aurora Park	East Aurora	3/30/06	$7,000
United Odd Fellow & Rebekah Home	Bronx	12/15/05	$6,000
Westmount Health Facility	Queensbury	2/10/06	$1,000
Willow Point Nursing Home	Vestal	3/6/06	$4,000

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

The State Took Other Action Against 20 Nursing Homes 12/16/06 - 3/16/07[1]

NAME OF HOME	LOCATION	IJ,SQC or G	SURVEYDATE	ACTIONS[3]
Bellhaven Nursing & Rehab Center	Brookhaven	GG	2/9/07	DPOC, DOPNA
Bridge View Nursing Home	Queens	IJ/SQC	2/7/07	State Monitor, DPOC, Inservice, DOPNA
Dr. Susan Smith McKinney	Brooklyn	GG	1/8/07	DPOC, Inservice, DOPNA
Folt's Home	Herkimer	IJ/SQC	2/26/06	State Monitor, DPOC, Inservice, DOPNA
Glendale Nursing Home	Scotia	IJ/SQC	12/28/06	State Monitor, DPOC, Inservice, DOPNA
Harbour Health	Buffalo	IJ	12/27/06	State Monitor, DPOC, Inservice, DOPNA
Hawthorn Health	Buffalo	GG	12/8/06	DOPNA
Lewis County	Lowville	IJ/SQC	11/17/06	State Monitor, DOPNA
Marcus Garvey Nursing Home	Brooklyn	IJ/SQC	11/22/06	DPOC, Inservice,
Mountainside NH	Margaretville	IJ/SQC	3/14/07	State Monitor, DPOC, Inservice, DOPNA
Nassau Extended Care Facility	Hempstead	GG	11/7/06	DPOC, DOPNA
Northwoods, Hilltop	Niskayuna	IJ/SQC	2/7/07	State Monitor, DPOC, Inservice, DOPNA
Riverview Manor	Owego	GG	11/2/06	DPOC, Inservice
Sutton Park	New Rochelle	IJ/SQC	11/29/06	State Monitor, DPOC, Inservice, DOPNA
Syracuse Home Association	Baldwinsville	IJ/SQC	12/27/06	State Monitor, DPOC, Inservice, DOPNA
Terence Cardinal Cooke	New York	IJ/SQC	2/21/07	State Monitor, DPOC, Inservice,
Unity Living Center	Rochester	GG	1/5/07	DOPNA
Vivian Teal Howard	Syracuse	IJ/SQC	1/31/07	State Monitor, DPOC, Inservice, DOPNA
Wartburg Lutheran Home	Brooklyn	IJ/SQC	3/6/07	State Monitor, DOPNA
Wartburg Nursing Home	Brooklyn	IJ/SQC	3/8/07	State Monitor, DOPNA

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

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

[3]Denial of Payments for New Admissions (DoPNA): Facility will not be paid for any new Medicaid or Medicare residents until correction; Directed Plan Of Correction (DPOC): A plan that is developed by the State or the Federal regional office to require a facility to take action within specified timeframes. In New York State the facility is directed to analyze the reasons for the deficiencies and identify steps to correct the problems and ways to measure whether its efforts are successful; In-Service Training: State directs in-service training for staff; the facility needs to go outside for help; State Monitoring: state sends in a monitor to oversee correction; Termination means the facility can no longer receive reimbursement for Medicaid and Medicare residents.

Enforcement Actions Against Nursing Homes

CIVIL MONEY PENALTIES[1] AGAINST 8 NURSING HOMES: 12/1/06 – 2/28/07[2]

NAME OF HOME	LOCATION	SURVEY DATE	AMOUNT
Daughters of Jacob Geriatric Center	Bronx	7/10/06	$24,570.00
Greater Harlem Nursing Home	Manhattan	8/8/06	$62,497.50
Leroy Village Green Residential Health Care Facility, Inc.	Leroy	10/27/06	$ 3,412.50
Northern Riverview Health Care Center	Haverstraw	10/3/06	$ 2,275.00
Orchard Manor, Inc.	Medina	11/14/06	$75,900.00*
Stonehedge Health & Rehabilitation Center, Inc.	Rome	10/9/06	$ 4,550.00
Uihlein Mercy Center, Inc.	Lake Placid	11/14/06	$ 2,925.00
Whittier Rehabilitation & Skilled Nursing Center	Ghent	9/20/06	$24,375.00

* Amount does not reflect a 35% reduction as the facility did not waive its right to a hearing as permitted under law.
[1] Civil Money Penalties (CMPs) – a federal sanction against nursing homes that fail to comply with quality care requirements.
[2] As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2345. This list will be posted on LTCCCs website every three months.

Major Changes in State Government

A number of significant changes will affect the long term care community in NY State. The Governor has reorganized the Department of Health and has created two new offices: the Office of Health Insurance Programs and the Office of Long-Term Care Services and Programs.

The Office of Health Insurance Programs (OHIP), headed by Deborah Bachrach, will have responsibility for all government health insurance programs, including Medicaid and the Elderly Pharmaceutical Insurance Coverage (EPIC).

It will also oversee rate-setting within DOH, New York State Office of Alcoholism and Substance Abuse Services, Office of Mental Health and Office of Mental Retardation and Developmental Disabilities. Ms. Bachrach, J.D., was a partner at Manatt, Phelps & Phillips LLP, the national law and consulting firm, with a special focus on public health insurance programs, including Medicare and Medicaid. She has also served as Vice President, External Affairs at St. Luke's-Roosevelt Hospital Center and as Chief Assistant Attorney General in the office of the New York State Attorney General.

The Office of Long-term Care Services and Programs will assume responsibility for long term care programs currently overseen by several bureaus and offices throughout the Department. This office is headed by Mark Kissinger. Mr. Kissinger was most recently director of the Home Care Association of New York State and prior to that he was Deputy Secretary to former Governor George E. Pataki responsible for health and human services.

Michael Burgess, formerly director of the New York StateWide Senior Action Council, a member of LTCCC, is now director of the State Office of Aging. Greg Olson, formerly legislative aide to Assemblyman Steven Englebright, chair of the Assembly's aging committee, has joined SOFA as a deputy director focusing on policy.

Heidi Wendel was named the new Deputy Attorney General for the Medicaid Fraud Control Unit (MFCU) of the Office of the Attorney General. Ms. Wendel previously served as Health Care fraud coordinator at the United States' Attorney's Office for the Southern District of New York where she supervised large scale health care fraud investigations. She has pursued large scale civil recoveries, and has used the federal False Claims Act and whistleblower statutes to stop health care fraud.

James G. Sheehan has been appointed as the Medicaid inspector general for New York State. Mr. Sheehan previously served in the Office of the U.S. Attorney for the Eastern District of Pennsylvania since 1980. He will oversee the fraud and abuse enforcement activities of the state's $50 billion Medicaid program. He is one of the pioneer US Attorneys using the False Claims Act against nursing homes. The New York state Senate still must confirm the appointment. ❑

Staffing Ratios Now...

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decreased agitation and improved sleep.

Interviews with nursing home staff demonstrate their genuine care for the residents they care for but they do not have time to attend to all of their needs. In fact, nurses blame poor working conditions caused by insufficient staffing for the high average turnover rate. An article in the January 2007 issue of the New York State Nurses Association's *New York Nurse* reports that many nurses are working part-time or have changed professions due to poor working conditions. Increasing staffing ratios should be seen as part of the solution for the nurse shortage.

Nursing home residents, their families and nurses have been waiting while others are debating issues such as cost and nursing shortage. It is time for our representatives to acknowledge the link between quality of care and nurse staffing ratios. Residents are suffering from lack of care. Nursing home staff are sustaining injuries due to staff shortages. In order for nursing home residents to receive the care they need and for staff to be able to properly care for residents, they must be given a guarantee that our nursing homes will be staffed appropriately.

PLEASE SPEAK OUT NOW. Let your elected officials in Albany and Washington know that you are concerned about low staffing in nursing homes.

You can send a quick, free message from our Long Term Care Citizen Action Center at www.ltccc.org.

Or you can see the Action Alert Mailing List below for phone and address information.

Time and time again, elected officials tell us that they need to hear from their constituents that this is important.

Please take a moment now to help current and future nursing home residents. ❑

Do we have your correct contact information?

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

Action Alert Mailing List

NEW YORK STATE OFFICIALS:

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

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Albany, NY 12223

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

New York State Assembly:

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

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

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

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

Assemblymember Steve Englebright, Chair, Committee on Aging
engles@assembly.state.ny.us

New York State Senate:

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

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

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

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

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

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

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NY Seeks to Pay Nursing Homes Bonuses

The NY Department of Health (DOH) is currently developing criteria to institute a nursing home "pay for performance" (P4P) program in New York. P4P is an incentive plan which states can adopt, with approval by the federal Centers for Medicare and Medicaid Services, in which the state rewards nursing homes for superior or improved performance. The goal of these plans is, fundamentally, to provide a carrot stick to nursing homes to do better.

Little is known about whether or not P4P programs actually result in improvements for consumers (the benefit to facilities receiving extra money is, of course, quite tangible); CMS itself has referred to the concept as an experiment. A study on physician P4P published in the prestigious *Journal of the American Medical Association (JAMA)*, "Early Experience With Pay-for-Performance: From Concept to Practice," concluded that "Paying clinicians to reach a common, fixed performance target may produce little gain in quality for the money spent and will largely reward those with higher performance at baseline."

The fact that the effectiveness of P4P programs is highly questionable is just one of the concerns for consumers and consumer advocates. Because P4P generally works by identifying specific objectives – such as a reduction in pressure ulcers or an increase in staff retention – there is a danger that other components necessary for quality of care, quality of life or a good working environment might be ignored or, worse, sacrificed so that the facility can achieve the benchmarks necessary to be awarded money. For example, if pressure ulcer abatement was identified as the principal criteria (and as of this writing NY State appears to be choosing to do exactly this), a facility might put pressure on direct care staff to focus on pressure ulcers at the expense of feeding, toileting and other important functions. [Thus, P4P can also undermine the important goals of person-centered care and bringing culture change to nursing homes.]

In addition to the fundamental concerns that P4P may be bad policy, detrimental to both residents and staff, LTCCC has specific concerns about how the program is being instituted in NY State. LTCCC's executive director, Richard Mollot, is a member of the state workgroup on P4P. He was the only consumer representative invited to join the workgroup until the end of February, when the majority of substantive work had already been completed. The workgroup until that time comprised almost two dozen people; besides Richard Mollot and a few people from DOH, all of the other members were providers or from provider associations. Though Richard had advocated repeatedly for inviting additional consumers, those requests were rejected until he cited the P4P law which states that DOH must include representatives of consumers (not just a single representative).

Because providers held such an overwhelming majority, the workgroup's discussion and decision-making were heavily skewed in the favor of providers. Suggestions by Richard Mollot that the program focus on worker issues were shot down. The idea of measuring consumer satisfaction was dismissed as being "too difficult." Indeed, many argued that there was not enough money in the P4P pot to expect facilities to do very much ($6 million is expected to be available for awards this year).

If the incentives are so inconsequential, one has to wonder why so many providers, including multiple representatives from each of the provider associations, are so interested in the program. Unsurprisingly, though many other P4P programs include a penalty component (money is not only given to "good" performers but also taken from poor performers), this paradigm was rejected for the New York program.

Another important issue, which has not been resolved as of this writing, is whom the awards should go to. A majority of workgroup members believe that a substantial amount of the money should be directed to facilities that are performing well, whether or not they improve. However, Richard argued that the whole point of P4P is to improve performance, not to provide a bonus to facilities that are already doing the job for which they are paid. Members who wanted to reward these "good" facilities countered that not doing so would be tantamount to punishing them for doing a good job and would be a disincentive to providing good care to their

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CMP Partnership Summit...

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In 2004, New York State passed a law, long advocated by LTCCC, that permitted it to collect federal CMPs. LTCCC created the *CMP Stakeholder Summit* in order to implement in New York the recommendations made in our national report as well as to give additional guidance to the state Department of Health as it awards grants for projects funded by CMPs and state fines. This will begin during this year.

Groups which took part in the *CMP Stakeholder Summit* included: Alzheimer's Association NYC chapter, Brooklyn-Wide Interagency Council of the Aging, Center for the Independence of the Disabled of NY, Coalition for Institutionalized Aged and Disabled, Friends and Relatives of Institutionalized Aged, Geriatric Mental Health Alliance of New York, The Hudson Valley Ombudsman Program, InnerAction Plus, The Long Term Care Ombudsman Program in Westchester County, Manhattan Borough Wide Interagency Council of the Aging, NY State Long Term Care Ombudsman Program, NY State Ombudsman Association, Paraprofessional Healthcare Institute, Suffolk County Ombudservice Family Service League, and United Hospital Fund of NY.

Summit Recommendations for New York State

In addition to supporting implementation of the recommendations made in LTCCC's national report such as: absolutely require that funds be used for purposes directly related to nursing home residents; expend funds for CMPs/fines primarily for special projects and programs that stimulate resident quality of care and quality of life that can ultimately be replicated; authorize funds for innovative projects that go beyond regulatory requirements and ordinary budget items to improve residents' quality of care and quality of life, encourage person directed care, promote consumer advocacy and involvement and stimulate and support the spread of "culture change," the Summit generated a number of additional suggestions:

- Publicize the availability of funds.
- Encourage non-provider projects. It is important to make sure that small grassroots organizations and local ombudsmen programs are able to participate.
- Make sure that funded projects are focused on making meaningful change.
- Require that a project's goals have broad stakeholder support.
- Priority should be given to projects in the counties where the CMPs were levied.
- Require applicants to identify the underlying

The Coalition at Work

LTCCC's January coalition meeting featured a presentation by Sue Kelly (middle, picture on left), Associate Regional Administrator, Region II, Centers for Medicare and Medicaid Services.

CMP Partnership Summit...

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problems their projects will address, giving the scope of their projects and how many people will benefit.

An action plan was developed to encourage the implementation of these regulations and a small group of participants from the Summit agreed to participate in an ongoing CMP workgroup that will continue to work to implement these recommendations by meeting with policy makers and monitoring future funded projects. LTCCC will also continue to publicize CMP developments and help non-providers apply for funding by making sure they know of both the availability of the funds and how to apply once a request for proposals is released.

Join our CMP Stakeholder Group at http://groups.google.com/group/ny-cmp-stakeholders (the link is also on the CMP page or our nursing home Website, www.nursinghome411.org). Members of the Stakeholder Group will be able to take part in consumer oriented discussions of CMPS and hear the latest news from us on CMPs. ❑

Nursing Homes Bonuses...

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residents. Though the first sentence of the law states "Nursing home incentives for improved performance in patient care," many providers and the attorney for DOH argued that this did not mean that incentives had to go ONLY to improved performance. There was even some discussion at the workgroup meeting of whether the money can be given directly to administrators.

While it is not a huge amount of money, the dedication of time and resources to this issue by both the department of health and providers is worrisome, since both frequently cite lack of staff when criticized for not providing strong oversight or direct care (respectively). We believe that government and stakeholders should be looking at new and innovative approaches to resolving nursing home problems, which are widespread and often intractable. However, any initiative – P4P or otherwise – must be centered on addressing problems holistically, not putting Band-Aids on issues that providers identify for quick (and potentially temporary) fixes. Consumer input at the beginning and throughout the process is essential. Fundamentally, we cannot allow decision makers to lose sight of the fact that the goal is to improve performance in terms of resident care, not the performance of a facility's bottom line. ❑

LTCCC to Celebrate 25th Anniversary!

This year marks a quarter century of our work to improve the lives of nursing home residents and other long term care consumers in New York State. We are proud of our achievements and recognize that there are many challenges ahead to ensure that every consumer gets the care he or she needs and is treated with dignity.

Please Join Us At Our 25th Anniversary Event Honoring Governor Eliot Spitzer!

We are pleased to announce that we will be honoring Governor Eliot Spitzer, for his outstanding work to protect New York's most vulnerable citizens, at a gala event this November. For more information on tickets and sponsorship opportunities, please contact Sara Rosenberg at 212-385-0355 or sara@ltccc.org.

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