

MONITOR

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

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New Managed LTC Briefs for Policy Makers and Consumers

In the last edition of *The Monitor*, we discussed the major changes that will impact Medicaid and Medicare eligible individuals over the age of 21 who need 120 or more days of community long term care as well as for those in nursing homes. Enrollment for these individuals in managed long term care plans will be mandatory once the federal government gives its approval. At this time, the date for mandatory enrollment to begin in New York City is July 1, 2012.

“ We believe that there must be additional resources given to DOH to permit its staff to conduct meaningful monitoring of plan requirements and client outcomes.”

As promised, LTCCC has analyzed the recommendations of the state’s Managed Long Term Care Work Group of the Medicaid Redesign Team as well as their implementation by the state and has produced two briefs: one for policy makers and one for consumers. Both of these can be found on our special web page devoted to mandatory managed long term care: <http://www.ltccc.org/MandatoryManagedCare.shtml>. This page also has postings of the latest developments and is updated frequently. Please visit often.

The briefs analyze each recommendation of the work group and conclude with a list of ways to better these recommendations as well as new recommendations we believe will better protect the enrollees. Both briefs have two general recommendations and eight specific recommendations.

General Recommendations:

- The first general recommendation concerns the *continued on page 2*

Reimbursement for Quality Nursing Home Care

As noted in the last edition of *The Monitor*, the state has agreed to set aside \$100 million over two years from the amount the state reimburses nursing homes for care of their Medicaid residents (less than two percent of total amount) to be distributed based upon quality.

The Quality Work Group, chaired by Patrick J. Roohan, Division Director, Quality Improvement and Evaluation, Office of Health Insurance Programs, New York State Department of Health, met on January 27th in Albany to discuss the implementation of this policy. LTCCC is the only participant representing consumers.

Fifty million dollars will be distributed the first year to facilities if they report data to the Department on the agreed upon quality criteria. Fifty million will be distributed to facilities the second year for performing well on the agreed upon criteria.

The decisions yet to be made involve: (1) the measures facilities will report on which must be valid and reliable and, since the first year facilities will be paid just for reporting, data the Department does not already collect; and (2) how to evaluate quality for the second year. Hopefully by the time this article is printed, number one above will be decided.

LTCCC believes that the measures must include (1) staffing, (2) quality of life, (3) deficiency data and (4) clinical data. LTCCC submitted a list of possible measures within these four categories to the Department:

- **Staffing:** High numbers of staff; Low staff turnover; High staff retention; Low use of temporary staff agencies; Nurse aide participation in care conferences.

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fact that New York State is trying to make major changes in too short a time and with too few resources. We believe that there must be additional resources given to DOH to permit its staff to conduct meaningful monitoring of plan requirements and client outcomes.

- Second, although there has been much transparency of the process, not enough consumer representatives have been included on the original work groups. Any additional work groups must have a larger percentage of consumers or their representatives.

Specific Recommendations:

- The state should not begin implementing mandatory managed long term care enrollment until much more education has been conducted. In addition to sending information to potential plan members, educational sessions should be held throughout the state. A comprehensive education plan should be developed with public/consumer input. The plan should include a robust, user-friendly web resource.

- The state should not begin implementing mandatory managed long term care enrollment until plans are in place and meeting all requirements.

- The state should not begin implementing mandatory managed long term care enrollment until DOH has added the needed staff to monitor plan compliance and member care.

- Since the care management function is the heart of the plan, there must be requirements surrounding this

function such as:

- Educational and experience requirements and
- Ratio of numbers of care managers to clients related to acuity.

- There needs to be specific requirements related to how the member and his/her informal supports will “drive” the development and execution of the care plan. If there are disagreements, how will they be handled?

- There must be more than a choice of two providers, especially for nursing home care.

- There must be specific rules related to how the plan will take into account cultural and linguistic needs.

- The State must ensure that a member has the due process right to continue receiving services unchanged, as “aid continuing” pending a hearing, before a plan reduces or terminates services that were previously authorized by the plan or by the prior-approval procedure for the services that the individual previously received before mandatory MLTC enrollment.

The consumer brief also lists ways for consumers to have their voices heard. Consumers are urged to write to the Governor, leaders of State Assembly and Senate, chairs of Aging and Health Committees in Assembly and Senate, the DOH Commissioner and the DOH Director of Medicaid. They are directed to the LTCCC’s Citizen Action Center for addresses of policy makers and to www.ltccc.org for action alerts on this issue. Both briefs have been widely distributed. □



LONG TERM CARE COMMUNITY COALITION

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Importance of Consumer Participation In Reimbursement Policy Making LTCCC Releases Material and A Series of Webinars for Policy Makers and Consumers

Under a grant from the Commonwealth Fund, LTCCC collaborated with the University of Massachusetts to conduct a study of two states to produce material to both increase consumer involvement in Medicaid nursing facility reimbursement policy making across the country and to convince policy makers of the importance of consumer involvement. In addition, the project developed a series of webinars to help consumers both understand Medicaid reimbursement and to better participate in policy making.

Medicaid reimbursement is a significant area of concern for state and federal officials trying to balance their budgets. It also is a significant area of concern for nursing home residents and providers. Although resident advocates have been successful in influencing major changes in both nursing home rules and regulations and in encouraging culture change, few have been involved in the development or modification of state methods for reimbursing nursing homes.

Without doubt the interests of advocates may differ from those of state officials and nursing home industry representatives. In general, industry representatives prefer to maximize payment and flexibility under state methods for reimbursing nursing homes. This is in contrast to advocates who while also tending to favor maintaining payment levels, prefer that systems incentivize quality by holding providers accountable for performance and outcomes.

States typically employ taskforces when making major changes to the way nursing homes are reimbursed under Medicaid. In most cases, membership rarely includes consumers/residents' advocates.

Evidence suggests the importance of including the voice of consumer advocates in state reimbursement policy discussions. Lack of consumer involvement has the potential to result in the adoption of reimbursement systems that favor industry and government interests at the expense of issues important to residents and their families such as access, care quality, and quality of life. Lack of consumer involvement also has the potential to result in less creative changes to state reimbursement systems than might otherwise have been possible.

This study analyzed consumer participation in the design and implementation of Medicaid nursing home reimbursement in New York and Minnesota using written resources and in-depth open-ended interviews with key stakeholders. New York and Minnesota were chosen for study because preliminary research indicated

that consumer advocates had proven effective in influencing Medicaid nursing home reimbursement in these two states. Semi-structured interviews were undertaken with individuals with known or demonstrable experience with Medicaid nursing home reimbursement.

Twenty-four interviews were conducted with 27 individuals, 12 each in New York and Minnesota. Interview subjects included state legislators/legislative staff, officials within the pertinent state administrative agencies, consumer advocates representing both citizen advocacy groups and the state ombudsmen program, union staff, and nursing home industry representatives.

The findings suggest the importance of developing, demonstrating, and volunteering expertise as a means of gaining credibility as a legitimate actor, which, once earned, will lead to an ongoing role in state reimbursement policy discussions. They also suggest strategies for using that knowledge and credibility to effectuate change. These include volunteering and/or insisting on participating on state work groups and taskforces targeting reimbursement. They also include developing and accessing relationships with key public officials in the legislative and executive branches, in addition to supplementing taskforce memberships and stakeholder meetings with grassroots activities—e.g., action alerts, legislative lobbying days—that draw more widespread attention to an issue. Here, a division of labor may be useful with those advocates becoming expert in reimbursement partnering with other organizations capable of marshaling the resources necessary to conduct mass rallies, letter writing, email, and other broader-based endeavors. A number of products were published and are available for free download on our website: <http://www.ltccc.org/ConsumerParticipationinReimbursement.shtml>. These include a primer for consumer involvement in Medicaid nursing home reimbursement and other written materials for the public and policy makers as well as several free webinars for consumers to help them understand what they need to know about Medicaid nursing home reimbursement. □

A Long-Time Friend of LTCCC Passes Away

Mary J Caruso of Corning New York died on March 28, 2012. Long an advocate for better nursing home care, Mary wrote letters to the editor, sent LTCCC action alerts to all the people she knew and answered our many calls to action.

She will be missed.



Quarterly Enforcement Actions Against Nursing Homes

Where are State Enforcement Actions?

Starting with this edition, *The Monitor* will no longer provide NY State enforcement actions against nursing homes since the state has begun posting this information on the Department of Health (DOH) website. According to the state, they will be updating this information on a quarterly basis. Thus, we expect new information to be added by the 15th of January, April, July and October. LTCCC will continue to provide this information in the format devised by DOH (described below) on our website at www.nursinghome411.org/?articleid=10011.

Following is information on how DOH is compiling and posting these data on its website:

The table of information that we previously published as “NYS Fined Nursing Homes” is called “Enforcements, Stipulation Dates” on the DOH website. The following link provides a download of a PDF file with this table: http://www.health.ny.gov/facilities/nursing/federal_remedies_and_section_12_fines/. The table of information that we published under the title of “NY State Took Other Action Against Nursing Homes” is called “Federal Remedies” on the state website and can be found here: http://www.health.ny.gov/facilities/nursing/federal_remedies_and_section_12_fines/.

Rather than finding a new table for each quarter as we listed in *The Monitor*, the DOH tables will add new information to the original tables on an on-going basis. □

Selected Enforcement Actions of NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 5 Nursing Home Personnel 12/16/11 - 3/15/12

Nursing Home	Location	Defendant	Narrative	Sentence
Dr. William O. Benenson Pavilion	Queens	Joiner, Jessie, Licensed Practical Nurse	An 85-year old female resident suffered a fractured hip after the LPN knocked her out of a wheelchair and to the floor, after which the LPN failed to evaluate her or get immediate medical attention. The resident suffered a fractured hip. In addition, the defendant stole percocet from the supply of narcotics.	3/12/12: The court sentenced the defendant to three-years probation. The defendant also surrendered her license.
Northwoods Rehabilitation and ECF at Cortland	Cortland	Damon, Jennie E., Licensed Practical Nurse	Defendant forcefully administered an insulin injection to a resident without her consent and over her objection.	3/7/12: One-year Conditional Discharge. ²
Northwoods Rehabilitation and ECF at Cortland	Cortland	Nauseef, Mary, Registered Nurse	Defendant made a false entry in a resident's Nursing Admission/Readmission Assessment and Wound record indicating that the resident had a diabetic ulcer on his foot.	3/7/12: One-year Conditional Discharge.
Wayne Center for Nursing & Rehab	Bronx	Perez, Iris, Social Worker	Defendant social worker stole over \$400,000, from a resident suffering from dementia. The money was transferred to accounts in the name of the defendant and her family.	2/23/12: Defendant was sentenced to serve 2 - 6 years in prison and signed a Confession of Judgment in favor of the victim for \$400,000.
Williamsville Suburban Nursing Home	Williamsville	Jones, Laquita Shemik, Certified Nurse Aid	The defendant transferred the victim alone, using a mechanical lift, in violation of the resident's care plan.	2/1/12: One-year Conditional Discharge; \$205 Fine and surrendered her CNA certificate.

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

²Conditional discharge means if similar act is committed during the time period defendant can be brought back to court.

Federal Civil Money Penalties¹ Against 9 Nursing Homes: 12/1/11 – 2/29/12²

Name Of Home	Location	Survey Date	Amount
The Center for Nursing and Rehabilitation at Hoosick Falls	Hoosick Falls	8/17/11	\$7,500.00
Countryside Care Center	Delhi	8/1/11, 9/7/11, 9/19/11	\$104,898.15 ^{3,4,5}
Fiddlers Green Manor Nursing Home	Springville	9/12/11	\$1,625.00 ³
Genesee County Nursing Home	Batavia	8/26/11	\$3,250.00 ³
Rosewood Heights Health Center	Syracuse	10/14/11	\$6,500.00 ³
Rutland Nursing Home	Brooklyn	9/1/11	\$6,500.00 ³
Van Duyn Home & Hospital	Syracuse	10/3/11	\$44,850.00 ³
Van Rensselaer Manor	Troy	11/22/11	\$1,040.00 ³
Woodmere Rehabilitation and Health Care Center	Woodmere	12/1/11	\$16,575.00 ³

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

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

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

⁴Amount reduced due to financial hardship.

⁵Includes interest at 10.5% for paying in installments.



Quarterly Enforcement Actions Against Nursing Homes

New Addition to Enforcement Pages: Special Focus Facilities (SFF)

The federal Centers for Medicare and Medicaid Services (CMS) initiated the Special Focus Facility (SFF) program in 1999 “because a number of facilities consistently provided poor quality of care but periodically instituted enough improvement...that they would pass [the following] survey only to fail the next.... Such facilities with a ‘yo-yo’ history rarely addressed underlying systemic problems that were giving rise to repeated cycles of serious deficiencies.”

Due to resource limitations, only 136 nursing home across the country are selected for participation in the SFF program at any given time. On average, states have about two SFFs; since New York is one of the largest states in the country it is supposed to have at least five. Only California must chose more at six SFFs.

Once a facility is selected for inclusion in the SFF program it receives special attention from the state, including a federally mandated requirement that the state conduct at least twice as many survey inspections as normal (approximately two per year). The goal is that within 18-24 months of being in the program a facility will either: (1) develop long term solutions to its persistent problems or (2) be terminated from participation in the Medicare and Medicaid programs. Termination usually means that a facility is sold to a new operator or closed.

From a consumer perspective, the SFF program can be a valuable tool to crack down on nursing homes that are persistently failing their residents and, by identifying and fixing (or removing) a state’s worst nursing homes on an on-going basis, eventually improve nursing home care overall. Importantly, since CMS started to make the names of SFFs public, this program is an important tool that consumers can use to learn about the quality of the facilities in their communities and what facilities are doing to improve care and address problems.

SPECIAL FOCUS FACILITIES IN NEW YORK STATE - As of April 19, 2012

The numbers in parenthesis indicate the number of months the home has been on the list and identified as an SFF.

Facilities Newly Identified as a SFF	Facilities That Have Shown Improvement ¹	Facilities That Have Not Improved ²	Facilities That Have Recently Graduated from the SFF Program ³	Facilities No Longer Participating in the Medicare & Medicaid Program ⁴
Pleasant Valley (1) Rosewood Rehabilitation and Nursing Center (1)	Marcus Garvey Nursing Home (3)* Van Duyn Home And Hospital (6)	Blossom South Nursing And Rehabilitation Center (11)* Countryside Care Center (17)	The Hamptons Center For Nursing & Rehabilitation (34) Loretto Utica Residential HCF (25) Mercy Of Northern New York (27) Pathways Nursing & Rehabilitation Center (55)	None

¹Nursing homes that have shown significant improvement, as indicated by the most recent survey, and CMS is waiting to see if the improvement continues over time. If the improvement continues for about 12 months (through two standard surveys), these nursing homes will graduate from the SFF list.

²Nursing homes that have failed to show significant improvement despite having had the opportunity to show improvement in at least one survey after being named as a SFF nursing home.

³These nursing homes not only improved, but they sustained significant improvement for about 12 months (through two standard surveys). “Graduation” does not mean that there may not be problems in quality of care, but does generally indicate an upward trend in quality improvement compared to the nursing home’s prior history of care.

⁴These are nursing homes that were either terminated by CMS from participation in Medicare and Medicaid within the past few months, or voluntarily chose not to continue such participation.

*On the list for the second time; graduated and then put back as a special focus facility.

CMS updates a list of all SFFs in the country quarterly. See <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/sfflist.pdf>. **The following NY homes were previously on the special focus list but have since graduated: Highland Care Center, Blossom North Nursing and Rehabilitation Center, Whittier Rehabilitation and Skilled Nursing Center, Achieve Rehabilitation and Nursing Facility, Dr. William Benenson Rehabilitation Pavilion, Harbour Health Multicare Center for Living, Evergreen Valley Nursing Home, Williamsville Suburban, Mt. Loretto Nursing Home, Central Park Rehabilitation and Nursing Center, Elant at Newburgh, Pleasant Valley, Rosewood Heights Health Center.**



Quarterly Enforcement Actions Against Nursing Homes

Selected Administrative Actions By The NYS Office of Medicaid Inspector General

Action Taken Against Nursing Home Personnel 12/15/11 - 3/15/12¹

OMIG works to protect New York State citizens residing in long term care facilities through making sure that those responsible for their care do not engage in abusive and fraudulent activities. This is done through OMIG's ensuring that those who are enrolled as providers into the Medicaid program are properly vetted, investigating allegations of fraud and abuse within long term care facilities, and finally, excluding providers who have abused their positions as care givers. In addition to conducting their own investigations, the OMIG makes determinations to exclude based on other agency actions, including the State Education Department (SED), the Medicaid Fraud Control Unit (MFCU), and Human Health Services (HHS). A single provider can receive multiple exclusions, based on different indictments and convictions. This involved process works to protect residents of Long Term Care Facilities, because it ensures that even if one conviction is overturned, the abusive provider is still banned from receiving Medicaid funds based on other convictions.

Nursing Home	Defendant	Location	Narrative	OMIG Exclusions ² Based Upon
Beechwood Homes	James Jones, CNA	Amherst	Mr. Jones allegedly struck an 87 year old resident suffering from Alzheimer's Disease causing the man to sustain a fractured left femur. The resident subsequently underwent surgery to repair this fracture.	MFCU Indictment 2/05/2012
Beechtree Care Center	Valerie Allen, CNA	Ithaca	Ms. Allen allegedly stole a credit card from a male resident, and then forged the name of the resident during shopping trips at various stores.	MFCU Indictment 2/05/2012
Glen Island Center for Nursing and Rehabilitation	Marlon Legaspi, RN	New Rochelle	After MFCU requested the medical records of numerous residents, Ms. Legaspi allegedly tampered with physical evidence by adding orders to these records.	MFCU Indictment 12/19/2011
Glen Island Center for Nursing and Rehabilitation	Maria Salomon-Rosanes, RN	New Rochelle	After MFCU requested records for Medicaid recipients, Ms. Salomon-Rosanes allegedly made false entries in the records.	MFCU Indictment 12/19/2011
Guilderland Center Nursing Home	Leonard Clark, CNA	Albany	Allegedly, Mr. Clark grabbed a 95 year old woman's breast, leaving a sizeable bruise. Clark initially claimed he had given the elderly woman a bear hug to prevent her from falling, but later admitted it was much as the resident had claimed.	MFCU Indictment 1/16/2012
Hill Haven Nursing Home	Lisa Smithe, RN	Webster	Ms. Smithe practiced nursing while her ability was impaired by a mixture of prescription medications that rendered her incapable of performing her professional duties.	SED Consent Order ³ 3/11/2012
Northwoods Rehabilitation and Extended Care Facility	Opal Ingram, CNA	Schaghticoke	Ms. Ingram failed to provide care to a resident with multiple sclerosis. The resident's care plan called for her to be turned and positioned every two hours and checked for incontinence. MFCU video surveillance showed that while Ms. Ingram indicated in the flow sheets that she had provided such care, she actually had not on multiple occasions.	MFCU Conviction 2/20/2012 MFCU Indictment 6/02/2010
Sunnyside Care Center	Chester Andrews, LPN	East Syracuse	Mr. Andrews allegedly signed out narcotics for a patient 24 times and instead of administering the medication, converted it for his own use.	MFCU Indictment 2/05/2012

¹In addition to these actions, all of the providers which were reported as having actions taken against them by the Medicaid Fraud Control Unit in previous newsletters have been excluded by OMIG. Please see our newsletter archives at www.ltccc.org/newsletter for their names.

²Exclusion means that no payments will be made to or on behalf of any person for the medical care, services or supplies furnished by or under the supervision of the defendant during a period of exclusion or in violation of any condition of participation in the program. Additionally, any person who is excluded from the program cannot be involved in any activity relating to furnishing medical care, services or supplies to recipients of Medicaid for which claims are submitted to the program, or relating to claiming or receiving payment for medical care, services or supplies during the period. OMIG may take a variety of exclusion actions against a provider based upon: indictments; convictions; consent orders or HHS exclusion.

³An agreement between the State Education Department Office of Professional Discipline, Board of Regents, Committee of the Professions and the licensee who admits guilt to at least one of the alleged acts of misconduct. The Consent Order provides the details of the misconduct and the assigned penalties.



Quarterly Enforcement Actions Against Nursing Homes

Selected Administrative Actions By The NYS Office of Medicaid Inspector General

Action Taken Against Nursing Home Personnel 12/15/11 - 3/15/12¹ (continued)

Nursing Home	Defendant	Location	Narrative	OMIG Exclusions ² Based Upon
Williamsville Suburban Nursing Home	Linda Banks, CNA	Williamsville	Ms. Banks physically transferred a resident alone, using a mechanical lift without the assistance of another person, in violation of the resident's care plan.	HHS Exclusion 1/19/2012 MFCU Conviction 2/23/2011
Williamsville Suburban Nursing Home	Leslie Thompson, LPN	Amherst	Ms. Thompson failed to perform range of motion (ROM) exercises with a resident. MFCU video surveillance revealed that no ROM was performed on the resident, even though Ms. Thompson falsely indicated she had performed the exercises with the resident by signing the ROM flow sheet.	HHS Exclusion 1/19/2012 MFCU Conviction 6/5/2011 MFCU Indictment 5/24/2010

¹In addition to these actions, all of the providers which were reported as having actions taken against them by the Medicaid Fraud Control Unit in previous newsletters have been excluded by OMIG. Please see our newsletter archives at www.ltccc.org/newsletter for their names.

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Reimbursement for Quality *continued from page 1*

- **Culture Change/Quality of Life:** Use of consistent staff-resident assignment; High scores on resident/family satisfaction surveys.

- **Deficiency Data:** Low numbers of deficiencies over three years; Looking at last two “annual” surveys and any complaints during the last two years to see that there has been no actual harm, substandard care, or IJ (putting residents in immediate jeopardy of death or serious harm); No special focus facilities should be able to receive funds.

- **Quality Indicators:** Low prevalence of off-label use of antipsychotics; Low prevalence of new pressure sores; Low numbers of worsening pressure sores; Low prevalence of physical restraints; Low incidence of worsening bowel continence; Low incidence of worsening bladder continence; Low prevalence of indwelling catheters; Low prevalence of urinary tract infections (UTIs); Low prevalence of unexplained weight loss; Low incidence of increased need for help with ADLs; Low incidence of moderate to severe pain.

The providers on the work group have suggested that participating in *Advancing Excellence* should be a quality measure. We disagree. *Advancing Excellence* is a voluntary program meant to help nursing homes improve their quality. While the program has eight goals, facilities can choose which goals it wishes to

focus on, which may (or may not) reflect its most significant problem or the needs of its residents. Most importantly, participation in *Advancing Excellence* does not mean that a facility is improving on the overall goals of the campaign or even on the goals selected by the facility. In fact, participating in *Advancing Excellence* does not seem to correlate with higher quality. According to the Center for Medicare Advocacy (*Voluntary Nursing Home Improvement Program Does Not Work*, January 11, 2012), Special Focus Facilities (SFFs), which are defined as among the 1% of worst performing nursing facilities in the country, participate in *Advancing Excellence* at high rates. Many facilities appear to have participated in *Advancing Excellence* when they were first identified as SFFs. Participation in the Campaign clearly has not improved their performance. In addition, we would not support measures such as:

- Just participating in collaboratives to improve care;
- Merely conducting resident/family surveys; or
- Just taking steps to implement culture change.

The group has only met once as of the printing of this edition. We hope decisions will be made in time for the data to be collected by the facilities and reported to the state in time to begin implementation of this important initiative. □

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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 518-455-4000. In addition to your personal representative, it is important that the following leaders hear from you:

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