

MONITOR

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

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NY Office of Medicaid Inspector General: Holding Poor Providers Accountable



This article was written by the staff of the Office of the NY Medicaid Inspector General (OMIG). LTCCC invited OMIG to write an article for The Monitor to discuss some of the work they are doing to

hold poor providers accountable. In particular, we have been very interested in OMIG's innovative approaches to holding nursing home providers accountable when they fail to meet minimum standards.

In the last three months of 2010, five nursing home employees were convicted in prosecutions by New York's Medicaid Fraud Control Unit. Where are they now? Following are details about three of them.

Nurse Kelly Radford, LPN, stole pain medications from her patients at the Jewish Home of Central New York in Syracuse, and falsified records to show the patients had received them. Stephanie Pritchard, CNA, stole jewelry from a resident while working at The Centers at St. Camillus in Syracuse, and gave it to her boyfriend to pawn. Carolyn Williams, CNA, tried to move a resident in the Meadowbrook Care Center

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Update on LTCCC's Assisted Living/Adult Home Study

As reported in the last edition of the newsletter, with funding from the Robert Sterling Clark Foundation, LTCCC is examining the adult home and assisted living industry in New York in order to identify common problems found by state inspectors, identify consumer quality of care and oversight concerns, assess the strengths and weaknesses of the laws and regulations governing assisted living and departmental enforcement, and develop recommendations to improve care and over-

“Complaints are discouraged; there is a fear of retribution.”

sight. A final report will be released in the Summer of 2011 summarizing its findings on both the quality of care in assisted living communities, as well as the ability of the state to oversee assisted living and hold providers accountable. The report will be posted on our assisted living website: www.assisted-living411.org. This article describes the findings so far.

The NY Department of Health (DOH) has the duty to ensure that facilities are complying with the applicable rules and regulations governing care in assisted living facilities. DOH is required to make at least one full unannounced inspection of each adult home every eighteen months and to conduct complaint, follow up and other inspections as needed. To guarantee compliance with regulations, DOH is permitted to take

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Save the Date

**LTCCC to Hold 3rd Annual Reception
October 6th, 6-8pm**

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enforcement actions including suspending a facility's license, limiting their ability to operate, and levying civil penalties. In light of the recent invalidation of crucial consumer protections in the 2004 assisted living law, (see article in last edition of *The Monitor*) the role and efficacy of DOH oversight is of paramount importance.

Preliminary statewide findings, based upon DOH inspection reports, ombudsmen complaint data and surveys of ombudsmen and consumer representatives, indicate that a majority of facilities are cited for non-compliance year after year and, although the numbers of deficiencies have gone down in recent years, the very same critical areas are cited the most year after year (from 2002 to 2010): resident care, medication management and environmental issues. Another alarming finding is that many of the medication management and environmental citations are repeats from previous inspections.

When looking at the documentation surveyors used for citing the facilities, project staff noted that resident and family interviews were infrequently used. Record review, staff interviews and direct inspector observation were the most commonly used documentation for citing facilities.

Preliminary statewide ombudsmen complaint data and survey findings indicate that the three areas receiving the most complaints are resident services, resident rights and food service. The category of resident services is similar to DOH findings, but the two other areas are different from those cited by DOH. The final report will discuss these differences and will show these data broken down by state regions.

Looking at the effectiveness of DOH and what, if any rules and regulations need to be strengthened or weakened, nearly half of the responding local ombudsmen felt that the survey rules and regulations needed to be strengthened with a third also stating that the enforcement regulations needed to be strengthened. In addition, the respondents believed that the care standards most in need of strengthening were: resident services, resident rights and staffing.

The next step in the study is an analysis of enforcement actions undertaken by DOH in the context of repeat citations and one-on-one interviews with ombudsmen and consumer representative to find out more about the issues they are seeing.

As noted above, the final report will be available at www.assisted-living411.org. □

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Do you use email? Access information and news online? If so, please

help us save paper – and money – by subscribing to the electronic version of *The Monitor*. As an added bonus, you will get your *Monitor* before hard copies go out! Send an email to info@ltccc.org with the name that appears on the mailing label on the back of this issue and let us know the email address you would like the newsletter sent to. We will email you back to confirm. Thank you. □



LTCCC

LONG TERM CARE COMMUNITY COALITION

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

Staff

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

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New Trainings and Resources on Impact of Healthcare Reform

LTCCC has received a grant from Statewide Senior Action Council (a member of LTCCC) to develop educational materials and conduct programs on how NYS seniors will be impacted by the Affordable Care Act (ACA, federal healthcare reform passed last year) and the issues they need to know about to advocate for themselves and their loved ones on long term care. The issues that will be addressed will include new Medicare benefits, the CLASS Act (the provision of the ACA which provides for a payroll savings mechanism for future long term care costs), the Elder Justice Act provisions in the ACA and changes to home care and nursing home care access, transparency and oversight.

LTCCC will present educational programs directed specifically at Statewide's members across New York, including a planned presentation at Statewide's annual conference, as well as training for professionals in the New York Metropolitan area who work directly with seniors. The materials will include a free consumer guide presenting an overview of long term care

issues in the ACA with links to internet resources that will be posted on a dedicated website page.

The goal of the project is to make sure that seniors and other New Yorkers who rely on these services, and those that provide assistance to them, are aware of important developments that might affect them which are now being implemented as a result of healthcare reform and that they have a means of easily accessing more in-depth information on the specific issues of concern to them.



Individuals can join Statewide Senior Action Council via this membership form: http://www.nysenior.org/?page_id=382. Statewide's Patients' Rights and Medicare Part D helpline number is (800) 333-4374. It can help answer your questions, and

refer you to the resources most appropriate to your needs. □

LTCCC Project: More Consumers at the Nursing Home Reimbursement Table

Medicaid is the major purchaser of nursing home care in the United States. Individual states design their methods of reimbursing nursing homes to achieve desired policy objectives such as cost containment, promoting good quality and facilitating access. The incorporation of multiple, sometimes conflicting incentives into state reimbursement systems has resulted in enormously complex and demanding methodologies that inhibit consumer participation in state rate-setting decisions. 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: access, care quality, and quality of life.

To address these issues, with funding from The Commonwealth Fund, LTCCC has partnered with Professor Edward Miller of the University of Massachusetts on a project to facilitate all stakeholders, including consumer advocates, having a place "at the table" to truly inform government discussions of

nursing home reimbursement policy reform. The project is focusing on two case studies (New York and Minnesota), examining how different stakeholders in each state participated in the development and modification of the nursing home reimbursement systems to better encourage access and quality for the public.

An important part of the project will be the development and presentation of a half-day seminar and series of web-modules to educate consumer advocates on the principles of nursing home reimbursement and its relationship to quality, access, costs and other outcomes.

Availability of the final report and web modules will be posted in future editions of *The Monitor*. □

Join us for the free program at the
Consumer Voice conference on Oct. 24.
Go to www.theconsumervoice.org/node/789
or call 212-385-0355.



Quarterly Enforcement Actions Against Nursing Homes

Selected Enforcement Actions By The NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 9 Nursing Home Personnel 12/16/10 - 3/15/11

Nursing Home	Location	Defendant	Narrative	Sentence
Adirondack Tri County Nursing & Rehabilitation	North Creek	Hayes, Brenda, CNA	Defendant struggled with a 98-year old female resident, yelled and grabbed her forearms causing 2" x 1" bilateral bruises on both.	1/26/11: One-year conditional discharge.*
Avalon Gardens Rehabilitation and Health Center	Smithtown	Chi, Tolly, CNA	Defendant performed an unassisted hooyer lift transfer of a severely disabled child resident without obtaining assistance as required by the resident's care plan.	12/22/2010: One-year conditional discharge.*
Finger Lakes Center for Living	Auburn	Fedigan, Janine, CNA & Peterson, Brandy, CNA	In violation of the care plan, CNA Fedigan transferred an 80-year old resident out of bed alone, took resident to the toilet, and tried to apply his leg brace, which caused the resident to tip over in his wheelchair, hit his head and suffer a skin tear. CNA Fedigan and CNA Peterson picked him up and told resident and his wife not to tell anyone what had happened. CNA Fedigan claimed it happened while the resident was in the bathroom.	2/9/2011: One-year conditional discharge* and surrendered CNA license.
Medford Multicare Center	Medford	Chaudhry, Rima, LPN	The defendant routinely gave the resident heart medication, Digoxin, without first taking his apical pulse to determine whether she should give it and then falsely recorded an apical pulse in his medication administration record.	2/1/2011: A term of 3 years probation with the term that she comply with psychological and narcotics conditions.
Diamond Hill Nursing and Rehabilitation Center (formerly Northwoods Rehabilitation and ECF-Troy)	Troy	Tremper, Jessica, CNA	Defendant falsely documented in the medical record that she turned and repositioned a resident.	3/4/2011: One-year conditional discharge*; 40 hours of community service to be completed by 5/6/11; and surrender of CNA certificate.
Rockaway Care Center, LLC	Queens	Laureano, Esmeralda, CNA	The defendant stomped on the chest of an 80-year old resident who was lying on the floor after he refused to follow her instructions to sit in his wheelchair.	3/1/2011: A term of 3 years probation with anger management classes as a condition of probation.
St. Camillus Residential Health Care Center	Syracuse	Valentin, Tabitha, CNA	The defendant stole jewelry from nursing home residents.	2/23/2011: A term of 5 years probation and restitution of \$2,270.
Terence Cardinal Cooke HCC	Manhattan	Quintyne, Coral, LPN	The defendant gave methadone to the wrong resident, who had to be hospitalized. She did not report her error and falsified documents in an attempt to cover it up.	2/4/2011: Six months jail.
Van Duyn Home and Hospital	Syracuse	Quinn, Maura, RN	The defendant failed to respond to requests to assess the increased level of pain a resident was suffering.	12/22/2010: One-year conditional discharge.*

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

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

Federal Civil Money Penalties¹ Against 8 Nursing Homes: 12/1/10 – 2/28/11²

Name Of Home	Location	Survey Date	Amount
Absolut Center for Nursing & Rehabilitation Endicott, LLC	Endicott	11/5/10	\$22,002.50 ³
Adirondack Tri County Nursing & Rehabilitation Center	North Creek	10/6/10	\$40,625.00 ³
Bay Park Center for Nursing & Rehabilitation, LLC	Bronx	7/26/10	\$25,740.00 ³
Blossom North Nursing & Rehab Center	Rochester	8/27/10	\$2,405.00 ³
Charles T. Sitrin Health Care Skilled Nursing Facility	New Hartford	8/24/10	\$3,250.00 ³
Mercy of Northern New York	Watertown	9/17/10	\$3,250.00 ³
River Valley Care Center, Inc.	Poughkeepsie	9/13/10	\$13,455.00 ³
Sprain Brook Manor Nursing Home	Scarsdale	8/11/10	\$3,022.50 ³

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

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

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



Quarterly Enforcement Actions Against Nursing Homes

NY State Fined 13 Nursing Homes: 12/17/10 – 3/17/11¹

Name Of Home	Location	Date Of Survey	Amount ²
Bay Park Center for Nursing and Rehab	Bronx	12/18/09	\$4,000
Blossom Health Care Center	Rochester	1/15/10	\$10,000
The Brightonian	Rochester	2/12/10	\$2,000
Delaware Nursing and Rehab Center	Buffalo	10/27/08	\$2,000
Horizon Care Center	Queens	3/22/10	\$10,000
Livingston Hills Nursing and Rehab	Livingston	2/10/09 & 11/5/09	\$42,000
Morningside House Nursing Home Co.	Bronx	10/26/09	\$6,000
Ontario County Health Facility	Canandaigua	6/1/09	\$10,000
Park Ridge Nursing Home	Rochester	2/5/10	\$2,000
The Pines at Glens Falls Center for Nursing and Rehab	Glens Falls	5/26/10	\$10,000
Ross Health Care Center, Inc.	Brentwood	6/14/10	\$10,000
St. Joseph Nursing Home	Utica	12/14/09	\$8,000
Wayne Health Care	Newark	1/8/10	\$2,000

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

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

NY State Took Other Action Against 18 Nursing Homes 12/17/10 - 3/16/11¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Albany County Nursing Home	Albany	IJ/SQC	2/28/11	CMP, DPOC, Inservice, DOPNA
Bay Park Center for Nursing and Rehab LLC	Bronx	GG	2/16/11	DOPNA
Blossom South Nursing and Rehab Center	Rochester	IJ/SQC	1/31/11	CMP, Monitor, DPOC, Inservice, DOPNA
Cayuga County Nursing Home	Auburn	GG	1/31/11	DOPNA
Elant at Fishkill Inc.	Beacon	IJ/SQC	1/10/11	CMP, DPOC, Inservice, DOPNA
Indian River Rehab and Nursing Center	Granville	IJ/SQC	2/23/11	CMP, DPOC, Inservice, DOPNA
Julie Blair Nursing and Rehab	Albany	IJ	1/31/11	CMP, Monitor, DPOC, Inservice, DOPNA
Marcus Garvey Nursing Home	Brooklyn	GG	2/18/11	DOPNA
The Pines at Glens Falls Center for Nursing & Rehab	Glens Falls	GG	3/2/11	DPOC, Inservice, DOPNA
Pleasant Valley	Argyle	IJ/SQC	1/6/11	CMP, Monitor, DPOC, Inservice, DOPNA
Rosewood Heights Health Center	Syracuse	GG	1/14/11	DPOC, Inservice, DOPNA
Rutland Nursing Home Co. Inc.	Brooklyn	GG	2/16/11	DOPNA
Sans Souci Rehab and Nursing Center	Yonkers	GG	2/11/2011	DOPNA
St. Francis Home of Williamsville	Williamsville	GG	1/24/11	DPOC, Inservice, DOPNA
Stonehedge Health & Rehab Center Chittenango	Chittenango	GG	1/20/11	DPOC, Inservice, DOPNA
Sunnyside Care Center	E. Syracuse	IJ/SQC	1/31/11	CMP, DPOC, Inservice, DOPNA
Van Duyn Home and Hospital	Syracuse	GG	12/14/10	DPOC, Inservice, DOPNA
Wingate at Beacon	Beacon	IJ/SQC	1/4/11	CMP, Monitor, DPOC, Inservice, DOPNA

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

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

³Civil Money Penalty (CMP): State recommends to CMS; State Monitoring: state sends in a monitor to oversee correction; Directed Plan Of Correction (DPOC): A plan that is developed by the State or the Federal regional office to require a facility to take action within specified timeframes. In New York State the facility is directed to analyze the reasons for the deficiencies and identify steps to correct the problems and ways to measure whether its efforts are successful; In-Service Training: State directs in-service training for staff; the facility needs to go outside for help; Denial of Payments for New Admissions (DOPNA): Facility will not be paid for any new Medicaid or Medicare residents until correction.

OMIG: Holding Poor Providers Accountable *continued from page 1*

in Freeport without the assist required to assure the patient safely. The Hoyer device fell on the patient who required stitches for facial wounds. Williams then falsified her CNA record to conceal the cause of the injury.

Radford is serving a one-year conditional discharge. Williams is in the middle of a one-year conditional discharge, had to surrender her CNA certificate and, as a condition of her discharge, can no longer care for any incompetent persons. Pritchard is on probation for five years and had to pay \$3,150 in restitution for stolen items. Radford, Williams, and Pritchard, like every nursing home employee convicted of a crime relating to patient care, have been excluded from the Medicaid program, through the Office of the Medicaid Inspector General (OMIG).

An OMIG exclusion means that Radford, Williams, and Pritchard may no longer work in patient care positions funded by New York Medicaid. Their names are posted on OMIG's "disqualified" list, available at www.OMIG.NY.gov, and potential and current employers in the Medicaid program are directed to check every month to assure that no excluded person works for them. Exclusion from Medicaid also means that a facility or long-term care organization is prohibited from using any excluded person to provide, order or prescribe services paid for by the Medicaid program. This limitation applies not only to nursing homes, but also to hospitals, home health agencies, and personal care agencies (since many individuals work in more than one care setting). In addition, under the Affordable Care Act of 2010, other states are required to exclude persons excluded in New York State, if their exclusion occurred after January 1, 2011.

OMIG also excludes individuals who have shown an unwillingness or inability to provide care, where needed for patient protection, even where no conviction occurs (e.g., license suspension, sexual abuse of patients, credible allegations of patient abuse or neglect). The courts have upheld the use of the remedy of exclusion not only for direct caregivers but also for

nursing home administrators and owners of nursing homes. In *American Healthcare Management v. Inspector General HHS Decision No. CR1278 (2005)*, an administrative law judge upheld the exclusion of a nursing home company for failure to report an injury to a patient.

Exclusion is only one of the administrative remedies the OMIG uses to protect nursing home residents and recipients of long-term care services in New York State. OMIG also conducts audits and investigations,

undertakes data analysis relating to use of atypical antipsychotic prescription medications, and reviews compliance programs by health care providers. OMIG collaborates with the Bureau of Long Term Care within the Department of Health to identify and the Attorney



General's Medicaid Fraud Control Unit to investigate potential fraud and abuse cases.

Significant care failures in nursing homes have long been recognized as an appropriate subject for regulatory and law enforcement action. Former prosecutor and former Department of Aging General Counsel David Hoffman has been both the leading theorist and leading practitioner in addressing "failure of care" cases in nursing homes, and his analysis provides a foundation for OMIG's approach to failure of care.

In a December 2007 article in *Health Care Compliance*, Hoffman noted that "while all health care fraud cases have the potential to impact on quality care, the better descriptor of these cases is not 'quality of care,' rather it is a 'failure of care.' These cares are not about the ordering of unnecessary services or entities paying kickbacks in exchange for business; they are about a wholesale failure of care delivery to a vulnerable population." [David Hoffman, "Quality of Care and Corporate Compliance—Perfect Together!" *Health Care Compliance Association*, December 2007, p. 32.]

OMIG's efforts parallel and support actions undertaken by other inspectors general. In its 2011 work plan, the federal Office of Inspector General notes that

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 **The courts have upheld the use of the remedy of exclusion not only for direct caregivers but also for nursing home administrators and owners...** 

OMIG: Holding Poor Providers Accountable *continued from previous page*

it “examines quality-of-care issues such as in nursing facilities...for substandard care that is so deficient that it constitutes ‘worthless services.’”

Since its founding in late 2006, the OMIG has examined the Medicaid challenge fraud and abuse by initially focusing on the larger providers, tackling systems issues, as well as individual intent, ensuring that providers meet standards for patient care, and emphasizing integrity standards built into the system rather than punishment after the fact.

We ask the following quality and enforcement questions:

- Have patients been severely harmed by failure of care?
- Is there an effective compliance program?
- Has there been a systemic failure by management and the board of directors to address failure of care or resident endangerment?
- What data systems exist to capture and report care quality issues? Do they work?
- Has the organization made false reports about quality, or failed to make mandated reports?
- Has the organization profited from ignoring poor quality, or ignoring providers of poor quality? (As Hoffman notes, “We’re doing the best we can.”)
- What is the desired or likely result of regulatory intervention?

We look for potential violations:

- Federal and state reporting requirements
- Reckless endangerment/battery/negligent homicide (state prosecution)
- Fraud/false claims (state prosecution)
- Violations of conditions of participation
- Violations of conditions of payment
- False records or statement
- Obstruction of state, federal or congressional investigations (e.g., witness tampering, destroying records, altering records, etc.)

- Failure to meet standards of care

In some cases, medical errors and care failures give rise to criminal cases. For example, in *USA v. American Healthcare Management* (November 2005), the indictment charged a violation of 18 U.S.C. § 1035 (false statements concerning health care) because “the defendants knew, at the time the claim was submitted, that the services were so inadequate, deficient and substandard as to constitute worthless services.”

OMIG relies on self-disclosures from providers, as well as anonymous reports from members of the public through the website (www.omig.ny.gov) and the toll-free fraud report hotline (1-877-87-FRAUD, or 877-873-7283).



If you believe that your nursing home is committing one of the violations named above, make an anonymous report directly to OMIG. If you can, send a copy to Richard Mollot, LTCCC’s executive director, at richard@ltccc.org (or see back page of newsletter for LTCCC’s mailing address).

Complaints and personal stories we receive from the public are vital to support our advocacy to protect nursing home residents. We will keep your personal information confidential, if you prefer. □



Examples of Medicaid Fraud:

- Billing for medical services not actually performed.
- Providing unnecessary services.
- Billing for more expensive services.
- Billing for services separately that should legitimately be one billing.
- Billing more than once for the same medical service.
- Dispensing generic drugs but billing for brand-name drugs.
- Giving or accepting something of value (cash, gifts, services) in return for medical services, i. e., kickbacks.
- Falsifying cost reports.

Or when someone:

- Lies about their eligibility
- Forges prescriptions
- Lies about their medical condition
- Loans their Medicaid card to others

Or when a health care provider falsely charges for:

- Missed appointments
- Unnecessary medical tests
- Telephoned services

If you suspect fraud or abuse, call:

1-877-87-FRAUD (1-877-873-7283)

Toll Free

- State of New York
- Office of the Medicaid Inspector General

www.omig.ny.gov



242 West 30th Street, Suite 306
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NYS Department of Health (DOH)
Corning Tower
Empire State Plaza
Albany, NY 12237

Mark Kissinger, Deputy
Commissioner
Office of LTC Programs
NYS DOH
Corning Tower
Empire State Plaza
Albany, NY 12237

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

Atty. General Eric T.
Schneiderman
The Capitol
Albany, NY 12224-0341
(518) 474-7330

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speaker@assembly.state.ny.us

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

Assemblymember Jeffrey
Dinowitz
Chair, Committee on Aging
dinowij@assembly.state.ny.us

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

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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.

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