

MONITOR

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

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NYS Court Rejects Vital Assisted Living Protections

In two long awaited decisions, Albany County (New York) Supreme Court judge Michael Lynch has ruled invalid key components of New York State’s assisted living regulations. The cases were brought by two adult home industry trade associations: “New York Coalition for Quality Assisted Living, Inc.” and “Empire State Association of Assisted Living, Inc.” and several individual adult home facilities against Richard F. Daines, MD, in his capacity as Commissioner of the NY Department of Health. They both sought to weaken regulatory safeguards and consumer protections in the assisted living regulations promulgated in 2008. These regulations put into effect the state’s assisted living law, which passed in 2004 following years of mounting scandals in the adult home industry in New York State. We hope that the Department of Health appeals this decision. As of this writing, lawyers for the Department are reviewing the case.

Perhaps the biggest concern for consumers is that the court accepted the industry’s contention that a facility should not be required to have a licensed nurse working in any capacity on its staff when the facility chooses to go beyond standard assisted living licensure and obtain special certification to provide housing and care to special, high needs populations such as people with dementia and the very frail elderly who

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Please Support LTCCC this Holiday Season. See Page 4.

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New LTCCC Project to Enhance Government Oversight

LTCCC has undertaken a new project, supported by the Robert Sterling Clark Foundation, to improve the quality of government oversight by engaging the four principal government agencies whose activities impact long term care quality – Department of Health (DOH), New York Attorney General’s Medicaid Fraud Control Unit (MFCU), the State Ombudsman Program (housed in the Office for the Aging) and the Office of the Medicaid Inspector General (OMIG). The goal is to bring greater synergy – and thereby effectiveness – to the oversight, monitoring and enforcement processes so that consumers get better care.



James Sheehan, Medicaid Inspector General

As readers of *The Monitor* know, LTCCC has been working for many years with DOH, the Ombudsman Program and MFCU to encourage and strengthen their activities to protect consumers. This project will permit us to meet regularly with OMIG as well, identify overlapping enforcement actions and quality issues and develop recommendations for each of the enforcement agencies in order to enhance their work to protect long term care consumers. These agencies are all trying to ensure that Medicaid funded facilities and agencies are providing the care they are supposed to be providing and for which they are being paid, and that individuals who engage in illegal or criminal activities face appropriate consequences. Although the end goals are similar, the agencies function more or less independently.

While OMIG is focused on maintaining and improving the integrity of the Medicaid system by predominantly recovering Medicaid funds that were inappropriately spent or fraudulently billed, it clearly

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are 'aging in place.' This was one of the major protections that LTCCC advocated for as the regulations were developed. Given the particular vulnerability and frailty of these individuals, we felt that it was crucial that there be an individual on staff on at least a full time basis who has the knowledge and expertise to assess individuals whose condition could change rapidly and who are especially vulnerable. Contrary to what the court indicated, we believe that the requirement comports with the language of the 2004 law, which clearly states: "In approving an application for special needs certification, the department shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident." [NY State Public Health Law Section 4655 [5]

In addition to nullifying the requirement for at least one professional caregiver on staff if a facility becomes certified to provide special care for those with dementia or enhanced needs, the court removed the structural and environmental standards in the regulations (though it found them to be "well motivated and in the interests of assisted living residents..."), nullified requirements pertaining to providing notice to a resident of a change in fees, and nullified provisions to ensure the safe administration and storage of medications.

LTCCC was especially disappointed and appalled that several NYS legislators went out of their way to support the industry's drive to undermine crucial consumer protections. Following are the legislators who are cited by the court as favoring business interests: State Senator Maziarz (Niagara, Orleans & Monroe Counties), State Senator Golden (Brooklyn),

Assembly Member Weisenberg (Nassau), Assembly Member Magnarelli (Onondaga), Assembly Member Destitto (Oneida), Senator Seward (Herkimer, Otsego, Schoharie & Greene), Assembly Member Pheffer (Queens), Senator Saland (Columbia & Dutchess), Assembly Member Townsend (Oneida & Oswego), Senator Stachowski (Erie), Assembly Member Finch (Broome, Tioga, Cayuga, Chenango & Cortland), Assembly Member McEneny (Albany), and Assembly Member Lupardo (Broome). What about their constituents? This is not just about business convenience and profits, as these legislators seemed to think. This is about people's lives.



What You Can Do!

LTCCC will be monitoring the situation and supporting action to overcome this setback for New York State's frail elderly and disabled. Email info@ltccc.org and ask to sign up for our action alerts and for future news and action on this issue. If you live in one of the counties listed above, please call or write to your representative's office and ask them why they are protecting the adult home business over the frail elderly.

Ask them specifically why they think that someone who has significant frailty or dementia does not deserve to have a professional caregiver on the staff of their residence. Why did they speak out against safeguards for the handling and dispensing of medication for our frail elders? Who are they working for in Albany? In addition, let the Department of Health know that it is crucial for them to appeal the case and that you support them in this endeavor. □

LTCCC

LONG TERM CARE COMMUNITY COALITION

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Nursing Home Bankruptcy: An Opportunity for Systemic Advocacy

When a nursing home files for bankruptcy protection it creates a very unsettling environment for residents, families, staff and the community at large. What if the facility closes? Residents worry about where they will live. Families wonder if they will still be able to visit if their resident must move to another nursing home far away. Workers worry about their job security. And the community must deal with the potential loss of a long-term care service for their most vulnerable residents who can no longer live independently. This stress over the uncertainty of the situation can go on

for many months and sometimes years as the bankruptcy process slowly plays out. During this time residents and families may receive little information, heightening their concerns over the unknown. Lack of information can also have a negative impact on the morale of direct care staff. Financial pressures may lead the facility to cut corners on everything from food to necessary supplies to resident activities. And if staff begins to leave, the home may find it difficult to find replacements, resorting to the use of agency help, or temporary staff who are unfamiliar with residents' needs and preferences. Ultimately, residents' care suffers, their quality of life decreases and residents' rights are neglected.

Fortunately, the federal Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [11 USC 333] provides for the appointment of a Patient Advocate when a health care facility which provides long-term care services files for bankruptcy. This law allows the federal Bankruptcy Court judge to appoint the State Long-Term Care Ombudsman, or his representative, as the Patient Advocate. The responsibility of the Patient Advocate under the law is to "monitor the quality of patient care and represent the interests of the patients." While this role is similar to that of long-term care ombudsmen serving residents of other facilities, the court-appointed ombudsman reports to the federal Bankruptcy Court through the U.S. Trustee's Office to provide assurance that the care of residents does not suffer while the facility is in bankruptcy. Every sixty (60) days the Patient Advocate is required to file a written report describing his or her action, observations and interactions with residents

and the facility during that time frame. If the Patient Advocate finds that the quality of resident care is declining significantly or is being materially compromised the Advocate must immediately file a report notifying the court, and may also request a hearing.

The judge may then order a hearing of the interested parties to discuss the situation and identify possible actions. Because of their expertise and experience as ombudsmen the federal court can confidently look to the Patient Advocate for recommendations on how to resolve these issues and may seek the ombudsman's opinion

as to whether or not the residents are in jeopardy.

The prominent role of the Patient Advocate has provided the ombudsman program with an additional level of influence and responsibility to negotiate systemic changes to improve the quality of care and quality of life for residents over the long-term. A recent case in upstate New York highlights this critical role and positive impact an ombudsman can effect in these situations. A nursing home in bankruptcy experienced a swift and significant decline in many areas of resident care. The Patient Advocate and local ombudsman volunteer were identifying numerous and serious concerns on a daily basis, including: lack of response to resident call lights; call light buttons deliberately placed out of reach of residents; residents not receiving medications; residents not being fed; lack of sufficient staff; closing of the activity room; and an overall uncaring attitude blatantly exhibited by staff. Working closely with Department of Health surveyors many of these issues were then cited during subsequent investigations. The Patient Advocate filed an interim report with the Court and the judge called a special meeting of all parties. Based on the Patient Advocate's recommendations in this forum the facility agreed to suspend new admissions until they were back in substantial compliance with all state and federal regulations and the Patient Advocate reported that resident care was improving. Other Patient Advocate recommendations implemented included: reassessing each resident to determine their continued need for nursing home care and to offer alternatives if

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understands the close relationship between quality and payment. James Sheehan, the Medicaid Inspector General for New York State, came to New York from Philadelphia where he held the position of Associate U.S. Attorney. For many years, Mr. Sheehan set the standard for prosecution of health care fraud under the Federal False Claims Act. Under this Act, any statement made to secure reimbursement that is inaccurate can potentially be a false claim. The False Claims Act subjects any person who presents a false claim for payment, or a false record or statement to get a claim paid, to a fine. While false claims violations require intent, courts have established that intent can be inferred from a pattern of behavior. Reckless disregard as to the accuracy of claims is enough to find a violation in this regard.

In addition, the act's "qui tam" provisions encourage "whistleblowers" to report fraud by providing that they can receive a portion of the funds returned to the government. In 2007, New York State passed its own False Claims Act modeled after the federal bill, which LTCCC supported. Having the state law adds an important foundation for enforcement.

As mentioned above, OMIG considers ensuring quality of care to be an important part of its efforts to ensure the integrity of the Medicaid system. An early example of using the False Claims Act in issues relating to quality is the case of the Tucker House nursing home. In 1996, residents in the Tucker House nursing home in Philadelphia were found to have terrible bedsores. The DOJ (Department of Justice) investigated and learned that one of the factors contributing to the aggravated bedsores was malnutrition. The DOJ asserted that every day of care paid for those patients was a false claim because the home was obviously not feeding residents. The case resulted in Tucker House

settling the case for \$535,000. The same theory was used in dozens and dozens of subsequent "quality fraud" settlements all around the country. In one of them, a federal appeals court in June 2008 found that none of the insurers for a nursing home was obligated to pay anything, including defense costs, even when the home thought it was covered for billing errors. It was the failure to provide promised levels of care and not billing errors that was the real problem, the court said.

Because LTCCC's mission is to improve care and quality of life for consumers, we strongly support enforcement activities that connect poor care with penalties, so that providers have a greater incentive to meet the safety and quality of life standards that too many of them fail to maintain.

LTCCC hopes that by meeting regularly and enhancing the communication between the regulatory agencies, the oversight process will be more effective. We look forward to welcoming Medicaid Inspector General Sheehan at our Coalition meeting on December 14, where he will discuss some of the innovative ways in which his office is working to improve provider accountability.

What You Can Do!



Let us know about the issues you are seeing in your community! LTCCC has begun a listserv and monthly conference call to discuss issues and developments in nursing homes, assisted living and home health care. The groups are only open to consumers, caregivers, consumer-oriented organization representatives and ombudsmen. Members can hear about issues and freely discuss concerns. For more information or to join, please send an email to richard@ltccc.org or call 212-385-0355. □

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Go to www.ltccc.org, www.assisted-living411.org or www.nursinghome411.org and click on the blue button on the right-hand side that says "Shop and Support LTCCC." This takes you to our page on iGive.com, an Internet "shopping mall" that allows you to shop securely at stores that have agreed to make a donation. To start shopping, the first time only, go to the top of the right-hand side of that page and enter your email address under "Join Here." Not only will you help us and long term care consumers, you will also be able to take advantage of special offers available through iGive, such as discounts on merchandise and shipping, etc.

Pre-Dispute Mandatory Arbitration: A Hidden Danger for LTC Residents

Arbitration is an alternative method of resolving disputes in which two parties present their individual sides of a complaint to an arbitrator or panel of arbitrators. The arbitrator, who is supposed to be neutral, then weighs the facts and arguments of both parties and decides the dispute. Arbitration may be voluntary or mandatory. In voluntary arbitration, both sides in the dispute voluntarily agree to submit their disagreement to arbitration after it arises and after they have an opportunity to investigate their best options for resolving their claim. In mandatory binding arbitration, a facility requires a consumer to agree to submit any dispute that may arise to binding arbitration prior to any problem (pre-dispute).

Pre-dispute mandatory binding arbitration clauses are of concern to long term care residents because they strip the resident and his or her loved ones of legal rights that may not seem important at the time they are signed (usually in a facility residency agreement) but which could be critically important in the future, if



there is ever a problem with the resident's care. A pre-dispute mandatory binding arbitration (PDMA) clause generally states that any dispute that occurs between a nursing home or assisted living facility and a resident will be resolved outside of court. [Note: In New York State, nursing homes are prohibited from imposing pre-dispute mandatory arbitration. However, there is no prohibition in other long term care situations.] In these cases, when there is harm or death resulting from poor or inadequate care, neglect or abuse, the individual or his representative finds that he cannot sue the facility; he is instead subjected to the arbitration process with its inherent limitations.

Arbitration rules vary depending on the organization that is used but overall there are many similarities. In PDMA, the dispute is usually handled by an association of the facility's choosing, so associations that provide this type of service have a vested interest in making sure that providers are happy with outcomes. Decisions

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-Nation-Wide Compilation of Survey and Enforcement Laws, - Regulations and Policies of Assisted Living Facilities

LTCCC has conducted a nation-wide study of assisted living policies, compiling each state's rules and regulations regarding assisted living facilities in order to provide information to the public. A report containing these results will be posted on our website in early 2010. The information will include: licensure requirements, which state agency conducts surveys, how often surveys are conducted, the survey protocol followed by surveyors, what sanctions are imposed upon facilities cited for deficiencies, the appeals process for citations, and whether facilities provide survey report information to the public.

We found that almost every state in the U.S. requires assisted living facilities to be licensed by the state agency in charge of regulating long term care facilities. Usually, this agency is the state department of health and/or social services. Penalties for failure to obtain a license range from monetary sanctions to criminal liability. As many *Monitor* readers know, New York State was one of the states without any licensure requirements for assisted living facilities. LTCCC fought hard

for over five years before the New York legislature finally passed a law to require licensure of assisted living facilities in 2004. However, although regulations were promulgated to implement this law, assisted living providers sued the state and won, and several of the regulations involving staffing, have since been nullified (see related article in this edition).

There are currently four states, (Connecticut, Minnesota, New Jersey and North Carolina), which do not specifically require licensure for assisted living facilities, or which only require licensure for specific types of assisted living facilities. For example, in Minnesota, assisted living facilities are merely required to be registered with the state. Registration has a lower level of oversight and has no rules regarding the physical environment except for building codes.

In terms of inspection, our data indicate that most states require that assisted living facilities be inspected annually or biennially, as well as upon a complaint by

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Pre-Dispute Mandatory Arbitration *continued from page 5*

made in arbitration are generally legally binding. Because the PDMA is usually part of the residency agreement, presented when an individual is admitted into the facility, as a prerequisite to admittance into the facility, it is unlikely that they are thoroughly read and fully understood or that legal representation is accessed to help the consumer or his loved ones understand. Given the intense situation that consumers and their families face when entering a facility it is an inopportune time for most people to assess the potential ramifications of every clause in the contract. Even individuals that fully understand but disagree with arbitration clauses are reluctant to challenge the facility that will, literally, have their lives in its hands.

Decisions made in arbitration are very difficult for a party to get overturned or set aside. Arbitration appeals generally require the appealing party to prove fraud, bias, or other misconduct by the arbitrator(s) or a “manifest disregard of the law” in making the award. This requires the appealing party to prove the arbitrator knew the law and intentionally chose to disregard it in formulating the award. If the arbitrator did not follow the law because he was ignorant of it, then the award will stand.

Arbitration is a confidential process. Neither the facility nor the resident may discuss the proceeding unless both parties agree or in cases where a court agrees to review the ruling. As a result, the problems that the resident faced – no matter how serious –

remain hidden from the public. Court cases, because they are a public record, can put a spotlight on the problems in a facility, increase public awareness of the problems and thus provide an incentive for a facility to change bad practices, as well as send a message to other facilities that they can be held accountable.

At the same time, the confidentiality of the process makes it almost impossible to gather information on previous cases of facility problems (i.e., by requiring complaints to be resolved through arbitration, the facility virtually guarantees that any problems it has had, for which a resident has held it accountable, will never “see the light of day.”) This is disadvantageous for residents with a current claim (who don’t have access to important information, such as the previous problems found and percentage of past rulings in the facility’s favor) as well as future potential residents, who have no way of knowing if a facility has a history of problems. As a result, it also gives facilities little reason to change behavior or conditions that have been harmful to residents. Because facilities draft the contracts they consequently have the power to create clauses that dovetail with the arbitration rules (and maximize their protection in arbitration).

LTCCC is compiling information on pre-dispute mandatory arbitration policies across the country and their impact on consumers and will be issuing a report on our findings. The report will be available at www.ltccc.org at the beginning of 2010. □

Nationwide Compliance *continued from page 5*

a resident, family member or some other concerned party. Typically, initial inspections are announced, while follow-up annual and complaint investigation inspections are usually unannounced. Survey teams are usually comprised of nurses, social workers, environmental safety surveyors and/or sanitarians.

Generally, in conducting surveys, surveyors review a sample of resident records and look to see if residents have been informed of their rights, if resident assessments have been performed, and if care plans have been developed for each resident. Usually, inspection reports are kept on file at the facility and made available to residents and family members upon request. Many state departments also post inspection reports on their websites.

Most states impose similar legal remedies and penalties against those assisted living facilities which do not

comply with regulations. These remedies vary in severity and generally include prohibition on admissions and readmissions or a limitation on enrollment; prohibition on the provision of care or treatment; issuance of a provisional or temporary license; license denial, suspension or revocation; and monetary penalties. In general, monetary penalties are implemented only for the most severe violations (e.g., resident was in imminent danger of, or actually suffered from, serious bodily injury) or upon a facility’s repeated failure to comply with regulations. Although most states allow facilities to appeal all or some of the sanctions levied against them, some states also require the facility to make the corrections before appeal, in an effort to prevent residents from being continually exposed to alleged dangerous or adverse conditions. □

Nursing Home Management Held Accountable in Hidden Camera Case

LTCCC has long urged the Medicaid Fraud Control Unit (MFCU) of the state attorney general's office to focus all investigations of poor care on the conduct of owners, administrators and governing bodies in addition to that of a facility's direct care workers. In many cases, issues of abuse and neglect are the result of systemic problems in a facility that operators should be held accountable for. In 2006, the Medicaid Fraud Control Unit of the State Attorney General's Office commenced an action against the owners, managers and governing body of Jennifer Matthew (Anthony Salerno (now deceased), NRNH (d/b/a Jennifer Matthew Nursing and Rehabilitation Center) and H.C.F.A Associates (d/b/a Healthcare Associates (HCA)), based upon an investigation into activity at their nursing home in Rochester, New York. MFCU, using a hidden camera, found that fourteen caregivers committed criminal neglect and falsification of records.

It also found that residents did not receive the care they were entitled to (and for which the facility was paid) and that its employees fraudulently documented that they had provided when they had not. The state alleged that the management of the facility failed to supervise the operation of the home to ensure that residents received treatments, medications, diets and other health services in accordance with care plans and to ensure that records are not falsified.

In the settlement signed on July 30, 2009, the governing body of NRNH accepted full responsibility for the breakdown in systems. Although NRNH has since divested itself of the operation of Jennifer Matthew, it and Healthcare Associates have committed themselves to reviewing and revising all systems and policies at the other nursing homes they operate to assure that: all caregivers are properly trained and supervised to treat residents with dignity and respect; that caregivers provide timely and professional services at all

times; and that the misconduct unearthed by the Medicaid Fraud Control Unit will not be repeated. A number of the other nursing homes they run have been noted in *The Monitor* in the past as having substantial care problems as well. We hope that their care improves with these new policies.

The settlement requires the development and implementation of a compliance program for the operation of all nursing homes operated by these managers which covers, among other things, communication lines, routine investigation and correction of problems, disciplinary policies to encourage good care, and a policy of non-intimidation. Crucially, from

LTCCC's perspective, it also requires that an independent executive be hired to oversee the implementation of the compliance program and to submit periodic reports to MFCU and DOH.

In addition, to make sure that treatments and services are actually delivered and not just documented as being given, all direct care staff must now utilize interactive electronic Point of Care systems and other technological solutions. This new technology must be implemented at the following HCA facilities: Cortland Care Center, Delaware Nursing and Rehabilitation Center, Highland Healthcare Center, Julie Blair Nursing and Rehabilitation Center, Northeast Center for Special Care, Oneonta Nursing and Rehabilitation Center, Rome Nursing Home and Vestal Nursing Center.

LTCCC is very pleased by this outcome. We have met with MFCU staff and the Deputy Attorney General frequently over the last few years discussing the need for interactive Point of Care systems rather than just requiring scanning bar codes to document time spent with residents and the need to hold owners, managers and governing bodies accountable for the care given to their residents. Well done, MFCU! We look forward to other similar settlements in the future. □





Enforcement Actions Against Nursing Homes

Civil Money Penalties¹ Against 6 Nursing Homes: 6/1/09 – 8/31/09²

Name Of Home	Location	Survey Date	Amount
Beth Abraham Health Services	Bronx	4/27/09	\$21,150 ⁴
Medford Multicare Center for Living	Medford	4/1/09	\$35,300 ³
Mount Loretto Nursing Home, Inc.	Amsterdam	1/20/09	\$77,610
Rivington House-The Nicholas A Rango Health Care Facility	Manhattan	3/9/09	\$45,750 ³
St. Catherine Laboure Health Care Center	Buffalo	4/17/09	\$4,500
Van Allen Nursing Home	Little Falls	10/31/07	\$56,945 ⁴

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 212-616-2220. This list will be posted on LTCCCs website every three months.

³ Amount does not reflect a 35% reduction as the facility did not waive its right to a hearing as permitted under law.

⁴ Amount reduced due to financial hardship.

Selected Enforcement Actions of NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 5 Nursing Home Personnel – 6/16/09-9/15/09

Nursing Home	Location	Defendant	Sentence	Narrative
Adirondack Medical Center-Mercy Nursing Home	Franklin	Ette, John, Certified Nurses Aide	7/22/09: Time served (71 days) and completion of anger management program	Defendant struck an 88 year-old female resident in the face, grabbed her arm, and pushed her back into her wheelchair. The resident sustained bruising on her face and a fractured right clavicle.
Kirkhaven	Monroe	Jones, Monique, Certified Nurses Aide	7/8/09: Three years probation	While defendant was assisting an 88 year-old resident into bed, the resident became agitated. Defendant kicked the resident in the area of his rib cage.
Medford Multicare Center for Living	Suffolk	Stumpf, Nichole, Certified Nurses Aide	7/1/09: Conditional discharge	As revealed by the facility's hallway video recordings, defendant and co-defendant Leticia Virgil-Green (see below) transferred a 94 year-old resident from her bed to a wheelchair without using a hoier lift as required by the resident's care plan. The resident complained of pain and two days later an x-ray confirmed that she had a fractured femur. Both defendants provided false written accounts of the incident to the facility.
Medford Multicare Center for Living	Suffolk	Virgil-Green, Leticia, Certified Nurses Aide	7/1/09: Conditional discharge	See above.
Our Lady of Consolation Nursing and Rehabilitative Care Center	Suffolk	Lewis, Danielle, Certified Nurses Aide	8/13/09: Three years probation and restitution of \$3,470	A 77 year-old resident gave defendant a \$1,700 check for holiday gift cards she wanted to give to staff; defendant stole the money by depositing the check in defendant's bank account without purchasing any cards or returning the money. The investigation uncovered 10 additional checks the resident had written that defendant cashed for her own use.

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



Enforcement Actions Against Nursing Homes

State Fines Against 7 Nursing Homes: 6/19/09 – 9/15/09¹

Name Of Home	Location	Date Of Survey	Amount ²
Absolut Center for Nursing Endicott	Endicott	12/5/07	\$16,000
Golden Gate Rehabilitation and Health Care Center	Staten Island	6/27/08	\$20,000
Heritage Commons Residential Health Center	Ticonderoga	6/27/08	\$8,000
The Hurlbut	Rochester	6/20/08	\$2,000
NYS Veterans Home at Montrose	Montrose	11/20/07	\$8,000
Oneida Healthcare Center ECF	Oneida	7/8/08	\$2,000
Valley View Manor Nursing Home	Norwich	9/27/07	\$2,000

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. 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.

The State Took Other Action Against 16 Nursing Homes – 6/19/09 - 9/15/09¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Adirondack Medical Center-Mercy	Tupper Lake	GG	8/20/09	DPOC, Inservice, DOPNA
Chase Memorial Nursing Home	New Berlin	IJ/SQC	7/29/09	CMP, Monitor, DPOC, Inservice, DOPNA
Countryside Care Center	Delhi	IJ/SQC	8/20/09	CMP, Monitor, DPOC, Inservice, DOPNA
Dumont Masonic Home	New Rochelle	IJ/SQC ⁴	7/16/09	CMP, DOPNA
Elant at Brandywine	Briarcliff Manor	IJ/SQC	9/2/09	CMP, Monitor, DOPNA
Elant at Newburgh	Newburgh	IJ/SQC	9/2/09	CMP, Monitor, DOPNA
Franklin County Nursing Home	Malone	IJ/SQC	6/26/09	CMP, Monitor, DPOC, Inservice, DOPNA
Horace Nye Home	Elizabethtown	GG	7/30/09	DPOC, Inservice, DOPNA
Jewish Home and Hospital	Bronx	IJ/SQC	6/23/09	CMP, Monitor, DPOC, Inservice, DOPNA
Northwoods Rehab ECC-Hilltop	Niskayuna	IJ/SQC	7/1/09	CMP, Monitor, DPOC, Inservice, DOPNA
Northwoods Rehab ECC-Troy	Troy	GG	6/16/09	Inservice, DPOC, DOPNA
Northwoods Rehab ECC-Troy	Troy	IJ/SQC	7/22/09	CMP, Monitor, DPOC, Inservice, DOPNA
NYS Veterans Home at Montrose	Montrose	IJ/SQC	8/27/09	CMP, Monitor, DPOC, Inservice, DOPNA
NYS Veterans Home St. Albans	Queens	IJ/SQC	6/29/09	CMP, Monitor, DPOC, Inservice, DOPNA
TLC Health Network Lake Shore Hospital NF	Irving	IJ/SQC ⁴	7/17/09	CMP, Monitor, DPOC, DOPNA
Wellsville Manor Care Center	Wellsville	IJ/SQC ⁴	8/6/09	CMP, DPOC, DOPNA
Whittier Rehab and Skilled Nursing Center	Ghent	GG	8/10/09	DPOC, Inservice, 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 Immediate 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.

³ Civil 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.

⁴ Immediate Jeopardy was corrected prior to the end of the survey. State will pursue enforcement.

Governor Signs Nursing Care Quality Improvement Act

Although facing strong opposition from providers, we are happy to report that Governor Paterson signed A1752a/S3527 (sponsored by Assemblyman Richard Gottfried and Senator Tom Duane) into law on September 16, 2009.

In 180 days, from that date, hospitals, nursing homes and diagnostic and treatment centers will be required to disclose to the Commissioner of Health and to the public (upon request) staffing and patient outcomes such as numbers of staff providing direct care on each unit and each shift; incidence of negative care such as medication errors, patient injury, decubitus ulcers, and infection; methods used for determining and changing staffing levels; complaint data (including information on investigations of complaints); degree of compliance with acceptable standards; and the findings of inspections.



Although some of this is already required for nursing homes under federal law (e.g., posting of staffing information and inspection results), they are crucial for the other types of facilities and the additional requirements are needed for nursing homes.

Kudos to all who sent messages to the governor. Governor Paterson received over 400 emails from nursing home residents, family members, nurses, social workers and other concerned New Yorkers from all over the state through LTCCC's Long Term Care Citizen Action Center. You made a difference!

Now that this important law is in place, the next step is to make sure that the public is aware of its rights and is able to take advantage of them when they need vital information relating to a provider's staffing and quality of care issues. LTCCC will be developing ways to facilitate public access. □

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appropriate; conducting a family meeting to provide an update on the status of the facility and offer an opportunity for family members to express their concerns and ask questions; and establishing a more consumer-friendly facility grievance procedure. During this process the Patient Advocate also met numerous times with the Resident Council to keep them informed and to get their input on how the facility was doing. Due in large part to the oversight and intervention of Patient Advocate substantial improvements in resident quality of care and quality of life resulted.

The role of the Patient Advocate requires constant coordination with the facility administration, U.S. Trustee's Office, surveyors and families and, of course, residents. The increased monitoring and attention a facility receives during a bankruptcy can serve to strengthen those connections and provide an opportunity to engage in more systemic, lasting

changes that enhance quality of care and quality of life for residents, and an environment that protects and promotes residents' rights. One advantage of using the ombudsman program as the Patient Advocate is that often times the ombudsman already has a working relationship with the facility. Representatives of the New York State Long-Term Care Ombudsman Program are currently serving as Patient Advocates in seven nursing homes that have filed for bankruptcy.

This article was written by guest contributor Mark Miller, the NY State Long Term Care Ombudsman. The Long-Term Care Ombudsman Program serves as an advocate and resource for persons residing in long-term care facilities including nursing homes, assisted living and adult homes. In New York, the program is administratively housed within the State Office for the Aging, and provides advocacy services through a network of 41 local programs. □

LTCCC's First Annual Cocktail Party

Honoring The Medicaid Fraud Control Unit Of The Office Of The Attorney General

A Huge Success!

On October 7, 2009 the Long Term Care Community Coalition honored MFCU at the Federal Hall in downtown Manhattan. Accepting awards were Charles J. Hynes, the first Special State Prosecutor to investigate nursing home fraud and whose leadership led to enactment of MFCUs across the country, William J. Comiskey, the first Deputy Director to use hidden cameras for nursing home investigations and Heidi Wendel, the current Deputy Director, under whose watch the New York MFCU was given the Inspector General's State Fraud Award for 2008 as the top Medicaid Fraud Control Unit in the country.

After the presentation of awards, each honoree gave a presentation. Joe Hynes spoke passionately about the beginning of MFCU which began with the terrible nursing home scandals of the 1970s in New York State. (Read his speech on www.ltccc.org.) Bill Comiskey spoke elegantly of his mission to protect nursing home residents by trying new and innovative ways of holding providers accountable and how he tried to live up to the accomplishments of Joe Hynes. Heidi Wendel spoke of the close relationship MFCU has with LTCCC and how important she believes it is to make sure that the office sees the larger picture of protecting residents as well as just winning cases. All spoke of the dedication of the MFCU staff, many of whom were in attendance. Thanks to our sponsors: PHI, pattiedesign.com multimedia designers, Schwartzapfel Truhowsky Marcus P.C., Bernstein Real Estate, Ostroff, Hiffa & Associates, SigmaCare, AARP, Omnicare, New York State Academy of Trial Lawyers and the New York State Nurses Association. The food was great and conversation lively. A great time was had by all. ☐



Guests enjoying the reception



Honoree Bill Cominsky



Honoree Joe Hynes at the Podium



Deborah Truhowsky, LTCCC Board Vice President, introducing Heidi Wendel



Honoree Heidi Wendel



Cynthia Rudder, Joe Hynes, Richard Mollot, Heidi Wendel and Bill Comiskey



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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:

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

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Assemblymember Jeffrey Dinowitz
Chair, Committee on Aging
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New York State Senate:

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

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

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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.

FEDERAL OFFICIALS:

To contact your federal representatives visit our action alert center at www.ltccc.org or call the congressional switchboard 202-225-3121.

