

# MONITOR

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

www.ltccc.org • WINTER 2010



## New LTCCC Report: Strategies to Increase Consumer Involvement in the Use of CMPs

Federal Civil Monetary Penalties (CMPs) and state CMPs/fines are imposed by regulatory agencies if a nursing home does not comply with regulatory standards. They present an additional, valuable resource for fiscally constrained states to improve the quality of nursing home life and care. In particular, because the federal CMPs are required by law to be used to fund projects or activities that benefit residents or that protect a resident and his/her assets if a facility is closing, they are a unique and potent resource to fund innovative activities that can make a difference in the lives of nursing home residents, such as culture change or other activities that improve the life and care of nursing home residents. An earlier LTCCC study, *Funding for Innovation: A Review of State Practices with Civil Monetary Penalties* found that some states did not use their CMP funds, others only offered the funds to nursing homes and others used the funds for nursing home projects that did not seem to have much value. In some cases, funds even appeared to be going to nursing homes for activities or services for which they were already being reimbursed by Medicaid. Because of these issues, the participation of consumer advocates in the process of developing the criteria for funding is crucial. With public participation, the likelihood of innovative and creative uses of the funds increases.

Under a grant from the Retirement Research Foundation and The Commonwealth Fund, LTCCC worked with consumers and long term care ombudsmen in four states (Georgia, Massachusetts, Pennsylvania and California) to help them increase transparency and consumer involvement in the awarding of CMP funds in their states. The final report on this project, released in October, can help stakeholders in other states learn how to be effective participants as

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## Update on Quality Pools: Money for Quality

In our Spring 2010 *Monitor* we reported that the Governor's proposed executive budget for 2010-2011 included a major change in nursing home reimbursement: the use of quality pools, a change LTCCC has been advocating for years. Quality pools would separate \$50 million of the almost \$6 billion Medicaid dollars that nursing homes receive on the basis of just admitting residents to be allocated to nursing homes on the basis of quality outcomes.



Unfortunately, although many of you sent messages and emails to the Governor and your legislators, urging them to make sure that quality pools were in the final approved budget, the final budget, passed on August 3, 2010, did not include them.

Once again, the providers have focused on protecting their bottom line rather than the needs of residents and convinced our representatives in the legislature to go along with them. While we were told that the New York State Assembly did not include the quality pools in its proposed budget because of a drafting oversight, rather than a lack of support among the leadership, we understand the Senate did not support their inclusion at this time. Although the major provider associations, the New York Health Facilities Association, the New York Association of Homes and Services for the

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their states award grants and distribute CMP funds. This is especially important as the levying and use of CMPs is one of the long term care areas focused on in the new national healthcare reform law. The lessons learned from the project should be useful to a wide range of people and groups, since the project participants represented varied stakeholder groups in diverse states: from state and local ombudsmen to volunteer organizations to paid consumer advocates.

Although the participants faced many obstacles to participating in their state's process for awarding CMP funds, such as states trying to use the funds to close their state's budget gap, volunteers having limited time to devote to the CMP activities and state and federal government withholding information, working with LTCCC helped them make major changes in their states. Among their many successes:

- The participants in Georgia were very successful in mounting a major, broad-based statewide grassroots advocacy effort to secure funds for the local ombudsmen program; they convinced their state agency not to propose that CMP funds only be used to help "special focus facilities" improve quality (as it proposed doing); and they developed a way to use some of the ombudsman funds for culture change activities.

- The participants in Massachusetts worked successfully on their state advisory committee to get culture change ideas into the proposal and convinced their state to require all nursing homes submitting a proposal for CMP funding to document that their resident and family councils were consulted and signed off on the proposal.

- The participants in Pennsylvania were able to receive information from the state on civil monetary penalties received and distributed by the state from 1991 to 2009 which was necessary to plan future activities.

- The participants in California succeeded in getting the state legislature to order an accounting and audit of the CMP accounts; publicized the findings and recommendations of the audit; and were able to obtain information from CMS on civil monetary penalties to help them in their campaign to publicize nursing home penalties.

The project report presents details on how LTCCC worked with each state, the goals and work plans that participants set for themselves, the obstacles they faced over the year and how they overcame these obstacles, achievements and lessons learned by each state and each state's planned future activities. In addition, the report contains a detailed strategy for ombudsmen and consumer advocates, how providers can help, recommendations for improving state use of funds from LTCCC's original national study on the levying and use of CMPs around the country and official information from CMS on how states may use CMP funds. Individual participants from each state have also agreed to respond to questions from other stakeholders who are looking for ways to participate in this process in their states (the report provides contact information for those participants). The report, as well as our national study and other resources on CMPs, is available at [www.nursinghome411.org](http://www.nursinghome411.org). □



**LONG TERM CARE COMMUNITY COALITION**

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

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## LTCCC Proposes Amendment to the Nursing Home Abuse Reporting Law

As it is now written, the NY CLS Pub Health §2803-d, the nursing home abuse law, provides inadequate protection for residents in residential health care facilities due to its requirement that complaints of abuse and neglect that are not substantiated by the NYS Department of Health are completely expunged (i.e., deleted from all records). Due to this policy of expungement, information that could be necessary to future investigations of patient abuse complaints is lost, even to the specific government agencies responsible for protecting residents. In fact, LTCCC has found out about a number of cases in which sexual abuse and other violence has been proved (in a court of law) to have been perpetrated against frail elderly and disabled people by individuals with a history of complaints where those complaints were expunged under the law as currently written.

While LTCCC believes that the law should maintain sensible protections against unsubstantiated accusations, to protect the rights of people who are unfairly accused, we believe that the law should be amended to provide a means of access to appropriate enforcement agency personnel to vital data on previous incidents. To accomplish this, we are proposing that the law be amended by changing expungement to “legally sealing.”

A precedent for such an amendment can be found in the Child Protective Service (CPS) regulations which, prior to 1996, also required the expungement of unsubstantiated (or “unfounded,” in CPS terms) complaints. After a six-year-old girl, Elisa Izquierdo, was beaten to death by her mother in 1995 it was revealed that CPS had missed many opportunities to intervene. In response

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## LTCCC Executive Director Presents

### LTC Ombudsmen Trainings on Resident Dignity & Quality of Life

Richard Mollot, LTCCC’s executive director, was invited to present at the NY State Long Term Care Ombudsmen’s regional trainings for volunteers over the summer. These trainings focused on quality of life issues for residents in nursing homes and assisted living.

The Long Term Care Ombudsman Program (LTCOP) is mandated under the federal Older Americans Act, which requires that every state have an Ombudsman Program that addresses complaints and advocates for improvements in the long-term care system. In New York State, ombudsmen volunteers are generally assigned one nursing home or adult home in their community that they visit on a regular basis to help residents with issues they might have in the facility; resolve resident complaints; educate



residents, families and providers about resident rights and good care practices; and provide information to the public on nursing homes and other long-term care facilities and services, residents’ rights and legislative and policy issues.

Because the ombudsmen are the only people advocating for residents “on the ground” (in facilities on a frequent basis) their work is truly vital. While they do not have the authority to

directly sanction facilities, like the state Department of Health, the Department of Health surveyors only go to nursing homes on average once a year. Ombudsman are often in their facilities on a weekly basis, some even more frequently. Thus, LTCCC was pleased to be provided the opportunity to present an

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# Quarterly Enforcement Actions Against Nursing Homes

## Selected Enforcement Actions By The NYS Attorney General

### Medicaid Fraud Control Unit<sup>1</sup> Took Action Against 12 Nursing Home Personnel 6/16/10 - 9/15/10

Nursing Home	Location	Defendant	Narrative	Sentence
Kaleida Health De Graff Memorial Hospital	North Tonawanda	Zakrzewski, Angela, CNA	The defendant performed a one-person transfer of a 91 year old resident with a mechanical lift in violation of the care plan that required a two-person assist. During the transfer, the lift tipped over and injured the resident.	8/19/10: One-year Conditional Discharge and 24 hours of community service. Defendant also surrendered her CNA Certificate.
Margaret Tietz Nursing & Rehabilitation Center (MTNHRC)	Queens	Perrier, Marie, CNA	The defendant restrained a resident by using bed sheets to tie the resident to a handrail while the resident was seated in her wheelchair.	8/3/10: Three years probation.
Medford Multicare Center	Medford	Bryant, Valerie, CNA	The defendant lifted resident who had fallen from the floor and put him back to bed without first getting a registered nurse to assess him for injuries. When the fall was reported by the resident, the defendant denied, in written statement to facility, that she was ever aware that resident had fallen.	8/12/10: One year probation with narcotics conditions and the special condition during the period of probation, she must refrain from being employed taking care of any incompetent person.
Medford Multicare Center	Medford	Butzbach, Christine, CNA	The defendant was seen bringing a resident and a Hoyer Lift into the resident's room and then exiting the room with the Hoyer Lift. The witness told the resident's wife that she believed that the defendant transferred the resident using the Hoyer Lift without the requisite assistance of another caregiver. Investigation revealed that the defendant had done this on other prior occasions as well and that she signed the resident's accountability record for those dates. Defendant admitted to our investigator that she had performed the transfer alone.	8/24/10: Conditional Discharge and 280 hours of community service. Special conditions include surrendering her certification, must refrain from being employed in any capacity taking care of any incompetent person and provide 3 month updates in which she must provide evidence that she is gainfully employed or in school or both.
Mountainside Residential Care Center	Margaretville	Barnes, Lisa, CNA	The defendant transferred the resident from the floor to her wheelchair without first having the resident assessed for injury.	9/8/10: Fined \$750 and surrendered her CNA Certification.
Mountainside Residential Care Center	Margaretville	Robertson, Linda, CNA	The defendant transferred the resident from the floor to her wheelchair without first having the resident assessed for injury.	9/8/10: Fined \$750 and surrendered her CNA Certification.
Northwoods Rehabilitation and ECF	Troy	Abel, Nancy, CNA	From 2/23/09 through 4/10/09, defendant failed to render care to a resident but indicated in facility records that she had provided this care.	8/2/10: Conditional Discharge; surrender of CNA certification; Fined \$300; Surcharges of \$410 and \$205.
Northwoods Rehabilitation and ECF	Troy	Inyard, Monique, CNA	From 2/23/09 through 4/10/09, defendant failed to render care to a resident but indicated in facility records that she had provided this care.	8/2/10: Conditional Discharge; surrender CNA certification; Fined \$300; Surcharges of \$410 and \$205.
Northwoods Rehabilitation and ECF	Troy	Cooper, Cynthia, CNA	From 2/23/09 through 4/10/09, defendant failed to render care to a resident but indicated in facility records that she had provided this care.	8/23/10: Conditional Discharge; surrender of CNA certification; Fined \$200 and a Surcharge of \$205.
Northwoods Rehabilitation and ECF	Troy	Simpson, Michelle, CNA	From 2/23/09 through 4/10/09, defendant failed to render care to a resident but indicated in facility records that she had provided this care.	8/30/10: Conditional Discharge, must surrender CNA certification within 30 days and fined \$300.
Northwoods Rehabilitation and ECF	Troy	Ingram, Opal, CNA	From 2/23/09 through 4/10/09, defendant failed to render care to a resident but indicated in facility records that she had provided this care.	8/30/10: Conditional Discharge, must surrender CNA certification within 30 days and fined \$100.
Sunnyside Care Center	East Syracuse	Dwyer, Thomas, LPN	The defendant, a Licensed Practical Nurse, signed Medication Administration Records without actually dispensing medications to residents in order to hide the fact that he was unable to complete all of his duties during his work shift.	7/22/10: One-year conditional discharge which includes not working in a nursing home.

<sup>1</sup>The unit prosecutes cases of patient abuse in nursing homes.



# Quarterly Enforcement Actions Against Nursing Homes

## Federal Civil Money Penalties<sup>1</sup> Against 15 Nursing Homes: 6/1/10 – 8/31/10<sup>2</sup>

Name Of Home	Location	Survey Date	Amount
Blossom South Nursing & Rehabilitation Center	Rochester	2/26/10	\$3,250.00 <sup>3</sup>
Bronx Center for Rehabilitation & Health Care, LLC	Bronx	4/16/10	\$36,450.00 <sup>4</sup>
Brooklyn United Methodist Church Home	Brooklyn	3/8/10	\$6,000.00
Heritage Commons Residential Health Care	Ticonderoga	6/1/10	\$33,800.00
Keser Nursing & Rehabilitation Center, Inc.	Brooklyn	4/29/10	\$6,500.00 <sup>3</sup>
Lawrence Nursing Care Center	Queens	3/10/10	\$19,532.50 <sup>3</sup>
Loretto Utica Residential Health Care Facility	Utica	4/15/10	\$16,005.18 <sup>3,5</sup>
Northern Riverview Health Care	Haverstraw	4/8/10	\$22,620.00 <sup>3</sup>
Northwoods Rehabilitation & Extended Care Facility-Rosewood Gardens	Rensselaer	5/26/10	\$6,500.00 <sup>3</sup>
Oneida Healthcare Extended Care Facility	Oneida	4/2/10	\$3,250.00 <sup>3</sup>
Otsego Manor	Cooperstown	4/30/10	\$6,500.00 <sup>3</sup>
Ridge View Manor, LLC	Buffalo	5/25/10	\$4,550.00 <sup>3</sup>
Rome Nursing Home	Rome	1/15/10	\$84,211.44 <sup>4,5</sup>
Rosewood Heights Health Center	Syracuse	3/9/10	\$4,615.00 <sup>3</sup>
Somers Manor Nursing Home	Somers	3/24/10	\$28,307.50 <sup>3</sup>

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

<sup>2</sup>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.

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

<sup>4</sup>Amount reduced 25% due to financial hardship. Original fine was 25% higher.

<sup>5</sup>Includes interest at 10.875% for paying in installments.

## NY State Fined 7 Nursing Homes: 6/17/10 – 9/17/10<sup>1</sup>

Name Of Home	Location	Date Of Survey	Amount <sup>2</sup>
Cayuga County Nursing Home	Auburn	5/14/09	\$12,000
Champlain Valley Physicians Hospital SNF	Plattsburg	8/20/08	\$6,000
Chase Memorial Nursing Home	New Berlin	7/29/09	\$2,000
Dumont Masonic Home	New Rochelle	7/16/09	\$20,000
Our Lady of Mercy Life Center	Guilderland	6/1/09	\$2,000
St. Catherine Labore HCC	Buffalo	4/17/09	\$4,000
Willow Point Nursing Home	Vestal	4/3/09	\$4,000

<sup>1</sup>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.

<sup>2</sup>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.

## NY State Took Other Action Against 8 Nursing Homes 6/17/10 - 9/17/10<sup>1</sup>

Name of Home	Location	Resident Impact <sup>2</sup>	Survey Date	Actions <sup>3</sup>
Charles T. Sitrin Health Care Center Inc.	New Hartford	IJ	8/4/10	CMP, DOPNA
Grandell Rehabilitation & Nursing Center	Long Beach	GG	7/29/10	DPOC, Inservice, DOPNA
John J. Foley Skilled Nursing Facility	Yaphank	IJ/SQC	7/1/10	CMP, Monitor, DPOC, Inservice, DOPNA
Lawrence Nursing Care Center	Queens	GG	6/15/10	DPOC, Inservice, DOPNA
Loretta Utica Nursing Home	Utica	GG	8/26/10	DPOC, Inservice, DOPNA
Pleasant Valley	Argyle	IJ/SQC	8/11/10	CMP, DPOC, Inservice, DOPNA
River Valley Care Center Inc.	Poughkeepsie	IJ/SQC	9/13/10	CMP, DOPNA
Wayne Health Care	Newark	IJ/SQC	7/9/10	CMP, DPOC, Inservice, DOPNA

<sup>1</sup>As 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.

<sup>2</sup>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.

<sup>3</sup>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.

## LTC Ombudsmen Training

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overview of the quality of life issues for ombudsman by the NY State Ombudsman, Mark Miller. The presentation, available on LTCCC's homepage ([www.ltccc.org](http://www.ltccc.org)) and the NYS Ombudsman's website ([www.ltcombudsman.ny.gov/resources/index/resources.cfm](http://www.ltcombudsman.ny.gov/resources/index/resources.cfm)) discusses how quality of life and dignity issues are critical components of good care. It focuses on some of the specific issues identified by the federal government in the new inspection guidelines for nursing homes released last year.

Following are some of the federal guidelines highlighted in the presentation:

- Residents have right to receive visits, including from non-relatives, 24 hours a day.
- The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.
- Resident dignity includes:
  - Grooming residents as they wish to be groomed;
  - Encouraging and helping residents dress in their own clothing;
  - Avoiding the use of bibs, plastic cutlery and paper plates;
  - Staff not standing over residents when helping them to eat;
  - Staff speaking respectfully to residents and addressing them with a name of the resident's choice;
  - Maintaining resident privacy of body, including keeping residents sufficiently covered, such as with a robe, while being taken to areas outside their room.



Copy and use the examples of resident dignity and quality of life in the presentation to inform nursing home residents and their loved ones, and nursing home resident and family councils, about the rights of nursing home residents and the requirements

of federal law.

If you are interested in learning more about the Ombudsman Program, including how to volunteer, call 1-800-342-9871 or visit <http://www.ltcombudsman.ny.gov/whois/directory.cfm> □

## Update on Quality Pools

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Aging, Greater New York Hospital Association and the HealthCare Association of New York State publicly supported this concept and agreed to work to make it a reality, we understand that, behind the scenes, they told state Senate staff that they did not want to include the quality pools because they were facing big cuts and did not want \$50 million (less than one percent of the money they will be paid to provide care!!) to be tied to the provision of quality care. Thus, they were able to defeat a major initiative to encourage quality.

We will continue to work for the inclusion of the pools in next year's budget and hope all of you will continue your advocacy.



Contact your NY State Senator and Assemblyperson and tell them that you believe it is time for the nursing home industry to be paid for providing decent care, not just reimbursed for expenses claimed when they take in residents. Let them know that you strongly support implementation of the nursing home quality pools. Ask them where they stand on these issues.

In addition, please join LTCCC's action alert list by emailing [info@ltccc.org](mailto:info@ltccc.org). You will receive alerts to from our legislative action alert center when the quality pools are reintroduced and on other important long term care issues. □

### Are You Shopping for the Holidays? Shop Online and Support LTCCC For FREE! It's easy! It's safe! No cost to you! 100's of stores!

Go to [www.ltccc.org](http://www.ltccc.org), [www.assisted-living411.org](http://www.assisted-living411.org) or [www.nursinghome411.org](http://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.

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## LTCCC Proposes Amendment to the Nursing Home Abuse Reporting Law

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to this deficiency in the law the state enacted Elisa's Law. Elisa's Law requires that unfounded complaints of child abuse be sealed rather than expunged. This enables investigators to detect patterns of abuse and gives them the benefit of having the information gathered in all previous investigations of a potential abuser, neither of which would be possible if the complaints deemed "unfounded" were automatically expunged.

Given the similarities between the vulnerability of children and that of residents in residential health care facilities, the nursing home patient abuse law should be likewise amended so that it provides the same level of protection as the Child Protective Service regulations. Otherwise, "unsubstantiated" complaints will continue to be completely expunged, increasing the likelihood that repeat offenders will slip through the cracks and have more opportunities to abuse residents.

Sealing would help law enforcement agencies in numerous ways. Enforcement agencies can use sealed reports in active investigations or court proceedings to aid them in structuring plea agreements or deciding whether to prosecute. Although cases would be sealed when the Department of Health has not found what it deems to be adequate evidence to take punitive action against the subjects of the reports, the information may reveal a work history that could justifiably affect how another government agency proceeds against the subjects of such reports. Making sealed reports available to other law enforcement agencies also reduces the likelihood that a guilty party will not be held accountable due to a lack of evidence because different agencies may have different resources and access to different witnesses and thus may be able to discover different evidence. Access to sealed reports would also give law enforcement agencies the ability to enforce the mandatory reporting regulations by cross-checking the witness lists of prior reports to ensure that witnesses had not failed to report prior incidents. Enforcing the mandatory reporting regulations makes it more likely that an



abusive employee will be reported and therefore better protects residents. Prior sealed reports could be used to prove that the subjects of such reports have knowledge that the conduct alleged constitutes a violation of the law and would therefore fulfill the "knowledge element" of the crimes should the subjects of such reports ever be charged with such crimes.

In addition, being able to see sealed reports might help in quality assurance reviews and training of investigators. Currently, when an agency holds a perpetrator accountable for acts that another agency deems "unsubstantiated" there is no way for them to review and learn from the case, since it has been completely expunged from their records.

While the proposed amendment will enhance the government's ability to protect residents, it also contains provisions to ensure protection of the rights of the accused. Recognizing that there is the potential for people to be wrongly accused, the proposed amendment provides significant limitations on access to any sealed records so that these individuals are protected. This includes language that limits access to sealed complaints to law enforcement agencies; the public would not have a right to see the records. Moreover, the amendment requires that even in the hands of a prosecutor, sealed complaints alone could not be used as evidence against the accused to sustain a subsequent complaint.



LTCCC will be meeting with state leaders to amend the law in the coming months. You can join our LTC Action Alert List by emailing [info@ltccc.org](mailto:info@ltccc.org) and be notified when you can add your voice to the campaign on this issue.

When the bill is introduced it will be crucial that lawmakers hear from as many citizens as possible – nursing home residents cannot wait for the publication of a major tragedy, such as what happened to Eliza, for adequate protections against perpetrators of sexual abuse and other violence. □

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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.

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