

LTCCC MONITOR

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

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Advising New Governor on Long Term Care Reform

This past fall, LTCCC undertook the project of conceptualizing and shaping a vision of the future of long term care in New York State. The end result of our efforts will be the production of a white paper for the governor elect and his transitional team. Our white paper will be an authoritative report on what we believe long term care should look like in the future. It will be a powerful, coherent and comprehensive resource for our political leaders and policy makers as they consider the needs of the long term care system in the future, and what changes they can make over the next few years. This white paper will give voice to the needs and desires of consumers of long term care. It will also provide a holistic approach to care that synthesizes the informed opinions of our Coalition's far-reaching scope of knowledge and experience.

As the administration of New York changes, it is our responsibility to inform the new guard of their responsibilities to promulgate policies and conduct regulatory activities in a manner that are responsive to the needs of New York's elderly and disabled.

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New Guide for Professionals: Medicare Drug Plans and Dual Eligibles

LTCCC has just released a guide on Medicare Part D drug plan issues for people working with individuals who are eligible for both Medicaid and Medicare. These dually eligible individuals are extremely vulnerable. They are the poorest, the sickest and the most expensive to care for. They generally use more services, have poorer healthcare outcomes, and use more drugs. Yet Medicare Part D, which they are required to use, provides fewer protections than Medicaid does. Dual eligible individuals may find they have access to fewer medications, higher co pays with no assurance of access to medications if they are unable to pay the co pay and, for many, no assurance of coverage while an appeal is being considered. This guide, "Medicare Part D and Dual Eligibles," offering ways to better protect these individuals, is an important resource.



The guide focuses on what individuals who are dually eligible should know about Medicare Part D. It discusses how to choose a plan, urging individuals to consider costs, coverage, convenience and utilization management tools. It discusses, in detail, how Medicare Part D is different from Medicaid; rights of these individuals who are dually eligible for both Medicare and Medicaid (including how to make an appeal if necessary). It discusses the added protections for nursing home residents who are dually eligible. It has a list of resources and links for further information.

Formulary

While explaining formularies, the guide also makes clear how plans might try to limit access to medica-

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Policy makers will be able to use this white paper as a plan for engagement and instructive change as they consider the future of long term care. The white paper is being developed with participation at weekly meetings of an advisory group of experts representing the different constituencies receiving long term care. The final product will be available on our Website upon its completion at the end of November and detailed in future editions of *The Monitor*.

Beginning on September 6, at our office on West 30th Street in Manhattan our advisory group, representatives of different consumer sectors, gathered to begin to shape this vision of long term care in the state of New York. Bringing different people with different perspectives together, bound with a common goal, the advisory group began isolating the common needs of a variety of populations. Over the course of the meetings, they addressed not only the biggest goals and challenges of our organizations, but were also able to discuss a variety of constituents' needs on a practical level. They began by addressing the public funding reimbursement systems, and moved on to debate numerous concerns ranging from cultural competency in long term care to the need to construct more housing opportunities and even of new array of housing designs. The goals of the group were not only to focus on our perspective, but also to encourage and inspire the readers on the possibilities on the horizon.

Outside of the advisory group, we gathered informed opinion by sending out a survey to our members and others to include other perspectives thus broadening the scope of our own opinions used in the writing of the white paper. By getting more



contributions, we were able to further clarify key areas of importance to consumers. After gathering these opinions we were able to move forward with a strong sense of consensus, by bringing as many new ideas to the table as possible. These ideas varied from the need to ensure proper placement within the continuum of care, to increasing the communication between caregivers and family members of nursing home residents.

Whereas there are numerous ways in which the state can approach provisions to services, facilities and regulation of the long term care industry, we hope to provide a unified view of what can be accomplished for the future. The white paper is just the first step towards making recommendations and providing a good pathway for the leaders of New York over the next several years. In order to improve care with a strong consumer-centered perspective and a variety of choices that meets the needs for all constituencies, it will require continued attention and participation. This white paper was just one way to assist our fresh Government, so that they can begin to shape a new legacy for our home state. □

LTCCC

LONG TERM CARE COMMUNITY COALITION

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

Phone (212) 385-0355 • Fax (212) 239-2801

website: www.ltccc.org

Staff

Richard J. Mollot, Esq., *Executive Director*
Cynthia Rudder, PhD, *Director of Special Projects*
Sara Rosenberg, *Office Manager*
David Savarese, *Public Policy Intern*
Sun Young Lee, *Public Policy Intern*

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Martin Petroff, Esq. • Deborah Truhowsky, Esq.

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Update on Assisted Living

Something happened to the assisted living regulations on their way to being made public for comment, the last step before going into effect. Finally, after months and months of discussion by the NY State Task Force on Assisted Living, the Department of Health and the Office on Aging verbally briefed the Task Force on what they had decided and sent their recommendations to the governor's office for sign-off before publication in the state register for public comment. We were pleased that many consumer protections appeared to have been included in the regulations.

That was in the summer. There they sat, and sat. In late October the regulations were suddenly sent back to the Task Force for more comments. What might have happened? If the State wanted to make sure the Task Force had the opportunity to make comments on the draft regulations once they were written, they should have been given to the Task Force before they were sent to the governor for sign-off. This new step not only delays the process (remember the assisted living law was passed in 2004 and we still have no regulations promulgated), but leads one to suspect that the governor might have been influenced by some stakeholders to delay the process before the public was permitted to comment. Hopefully, this is not true and by the time you receive this newsletter the regulations will have been published and they will not have been substantially changed.

“We will continue to make sure that assisted living residents are protected.”

According to the briefing the Task Force received, the published regulations should include a number of things we have all fought for:

1. Requirement of 16 hours a day of licensed nurse staff in enhanced and special needs assisted living, with 8 hours of the 16 being RNs;
2. Special training requirements for non-licensed personnel;
3. Requirement of a DOH prescribed or approved resident pre-admission and evaluation forms;
4. Disclosure requirements that include information about the availability of enhanced assisted living and/or special needs slots; stating the maximum number of enhanced assisted living beds and/or special needs assisted living beds the residence is currently approved to provide; and the posting, on a monthly basis, the

then-current number of vacancies under its enhanced assisted living and/or special needs assisted living programs.

Since it was clear from all the meetings of the Task Force that some assisted living providers – who were well represented on the Task Force – were upset about some of the provisions that the Department of Health and the Office on Aging thought were necessary to protect elderly assisted living consumers, we expect they will continue to complain bitterly. We must make sure the state knows that citizens believe these basic protections are crucial and that we will continue to make sure that assisted living residents are protected.

WHAT YOU CAN DO!

1. Check the published state registers starting with November 8th to see if the assisted living regulations are published.

They will be a new Chapter X consisting of Part 1001 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York. Go to: <http://www.dos.state.ny.us/info/register/2006.htm>.

We will notify all those on our Action Alert List when this happens. If you are not on our list and want to join, please go to: www.ltccc.org and click on *Take Action* on the top line.

2. When the regulations are finally published for public comment, we urge you to make formal comments. If the items listed above are not included in the regulations, let the state know that they must be included. □



Enforcement Actions Against Nursing Homes

CIVIL MONEY PENALTIES¹ AGAINST 12 NURSING HOMES: 6/1/06 – 8/31/06²

NAME OF HOME	LOCATION	SURVEY DATE	AMOUNT
Delaware Nursing & Rehabilitation Center	Buffalo	6/16/06	\$5,915.00
Eger Health Care and Rehabilitation Center	Staten Island	6/7/06	\$32,077.50
Fiddlers Green Manor Nursing Home	Springville	5/18/06	\$12,155.00
Gowanda Nursing Home	Gowanda	6/5/06	\$3,185.00
Hurlbut	Rochester	4/14/06	\$6,305.00
Riverview Manor Health Care Center	Owego	4/11/06	\$3,250.00
Schoellkopf Health Center	Niagara Falls	5/26/06	\$5,427.50
Seneca Health Care Center	West Seneca	2/24/06	\$650.00
Syracuse Home Association	Baldwinsville	2/23/06	\$650.00
The Waters of Aurora Park	East Aurora	3/10/06	\$11,830.00
Williamsville Suburban, LLC	Williamsville	4/7/06	\$11,797.50
Wyoming County Community Hospital SNF	Warsaw	3/3/06	\$975.00

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

² As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2345. This list will be posted on LTCCC's website every three months.



LTCCC's Annual Appeal Is Here!

The end of November signals the time of Thanksgiving and the beginning of the holiday season. It is also the one time a year that we send out our appeal for your support. If you believe that our work to protect long term care consumers – vulnerable people who need nursing home care, assisted living residents, and the elderly and disabled people everywhere who need long term care – is important, please help us now by making a tax deductible donation to LTCCC.

You can donate online by going to www.ltccc.org and clicking on the oval button on the right side that says "Donate Now" or send a check made out to "LTCCC" to: Holiday Appeal, LTCCC, 242 West 30th Street, Suite 306, New York, NY 10001.

Thank you for your consideration. The generous support of people like you helps to support many of our most important activities.



Enforcement Actions Against Nursing Homes

STATE FINES AGAINST 10 NURSING HOMES: 6/16/06 – 9/15/06¹

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT ²
Baptist Health Nursing and Rehab	Scotia	7/21/05	\$1,000
Betsy Ross Rehab Center	Rome	4/6/05	\$1,000
Eden Park Health Care Center	Cobleskill	10/3/05	\$1,000
Franklin County Nursing Home	Malone	9/19/03 & 9/29/04	\$6,000
Franklin County Nursing Home	Malone	4/28/05	\$1,000
Mercy Health and Rehab	Auburn	10/21/04	\$3,000
Mercy Health and Rehab	Auburn	3/17/05	\$4,000
Robinson Terrace	Stamford	3/25/05	\$1,000
Schervier Pavilion	Warwick	5/29/02	\$2,000
St. Francis of Buffalo	Buffalo	10/20/05	\$2,000
The Waters of Orchard Park	Orchard Park	4/1/05	\$1,000
Willoughby Rehab and Health Care Center	Brooklyn	10/8/03	\$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. These lists will be posted on LTCCCs website every three months.

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

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

The State Took Other Action Against 12 Nursing Homes 6/16/06 - 9/15/06¹

NAME OF HOME	LOCATION	IJ,SQC or G	SURVEY DATE	ACTIONS ³
Baptist Health Nursing and Rehab	Scotia	IJ/SQC removed	8/4/06	State Monitor, DPOC
Crest Hall	Middle Island	IJ/SQC	8/25/06	State Monitor, DPOC, DOPNA
Delaware Nursing and Rehabilitation	Buffalo	IJ/SQC removed	6/16/06	State Monitor, DPOC
Dr. William O. Beneson	Queens	IJ/SQC	6/22/06	State Monitor, DPOC, Inservice, DOPNA
Dr. William O. Beneson	Queens	IJ/SQC	7/26/06	State Monitor, DPOC, Inservice, DOPNA
Elant at Brandywine	Briarcliff Manor	IJ/SQC	9/11/06	State Monitor, DOPNA
Fairchild Manor	Lewiston	IJ/SQC removed	6/13/06	State Monitor, DPOC, Inservice
Greater Harlem	Manhattan	IJ/SQC	8/18/06	State Monitor, DPOC, Inservice, DOPNA
Kirkhaven	Rochester	IJ/SQC	7/18/06	State Monitor, DPOC
Livingston County SNF	Mount Morris	IJ/SQC removed	7/18/06	State Monitor, DPOC
Livingston County SNF	Mount Morris	IJ/SQC	8/3/06	State Monitor, DPOC, Inservice, DOPNA
Livingston Hills	Livingston	IJ/SQC removed	6/30/06	DPOC, Inservice
Oceanview Nursing and Rehab	Queens	GG	7/19/06	DPOC, DOPNA
Rockville Skilled Nursing and Rehab Center	Rockville Centre	IJ/SQC	8/28/06	State Monitor, DPOC, DOPNA

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

New Guides for Professionals...

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tions on their formularies by using utilization management tools such as step therapy (requirement that certain medications be tried before those prescribed by the enrollee's physician), dose restrictions (only specific doses are permitted), quantity limits (only a specific supply of the medication is covered within a certain number of days) or prior authorization (approval must be gotten in advance) before covering. It also explains the rights of enrollees if a formulary is changed.

Pharmacy

This section describes the rights enrollees have during a transition time, how they can use "Incurred Medical Expense Deductions," and how they can use New York State's "wrap-around benefit" to cover some medications their plan may not cover.

Below are some highlights from the guide. Dual eligible individuals in New York State need to know that:

- Medicaid will no longer cover most of their drugs. As of January 1, 2006, Medicare, not Medicaid, pays for most of the prescription drugs for dual eligible individuals.
- However, Medicaid will still pay for other health care costs.

- If they do not choose a plan, they will be automatically and randomly assigned to a plan. They may choose a different plan at any time if the new plan does not meet their needs.

- If they do not participate in a Medicare prescription drug plan, they may lose all their Medicaid benefits. However, there is an exception for some people, who do not have to join a plan if they have coverage through their employer or union.

- Enrollees must use a "participating" pharmacy (one that is in their plan's network) and enrollees must use their Medicare plan card at a participating pharmacy to get prescriptions rather than their Medicaid card.

- Medicaid will continue to cover certain drugs that are excluded from Medicare Part D coverage, including barbiturates, benzodiazepines, and certain over the counter medications covered under Medicaid.

- Medicaid may also pay for some medications that a specific plan will not cover. A pharmacist can simply bill Medicaid if the plan will not cover a drug that New York State will cover under its, "wrap-around benefit."

The guide is available for free on our website, www.ltccc.org (click on the button that says "Medicare Part D"). LTCCC encourages groups and individuals to freely copy and distribute this guide, as well as our guide on Part D for nursing home residents, to anyone who can benefit from the information. □

NEW YORK STATE OFFICIALS:

Governor Pataki
State Capitol, Albany, NY 12224
Phone: 518-474-7516
E-Mail: Go to:
<http://www.state.ny.us/governor>

Commissioner Antonia C. Novello
NY Department of Health
Tower Building
Empire State Plaza
Albany, NY 12237

Lisa Wickens
Deputy Director, OHSM
NYS DOH - Corning Tower
Empire State Plaza
Albany, NY 12237

Laurie Pferr, Deputy Director
New York State Office for
the Aging
Agency Building #2 - 2nd Floor
Empire State Plaza
Albany, NY 12223

Action Alert Mailing List

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 518-455-4100.

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

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

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

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

New York State Senate:

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

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

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

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

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

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

FEDERAL OFFICIALS:

President Bush
The White House
Washington, DC 20500
Phone: 202-456-1111
Fax: 202-456-2461
E-Mail:
president@whitehouse.gov

Leslie V. Norwalk, Esq., Acting
Administrator, CMS
7500 Security Boulevard
Baltimore, MD 21244-1850
Phone: 202-690-6726
E-Mail: leslie.norwalk@cms.hhs.gov

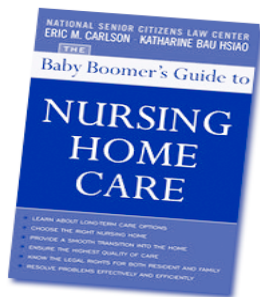


— Two New Consumer Guides For Nursing Home Residents —

Two new consumer guides provide invaluable information for nursing home residents, their families, and anyone else with an interest in nursing home care.

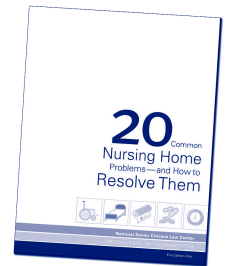
Some of this information may be surprising. For example, as the guides explain, a resident's family members are not subject to visiting hours, and can visit at any hour of the day or night. The resident and family members have the right to participate with nursing home staff in developing the resident's plan of care. The Medicaid program can pay for nursing home care even if an unmarried resident owns a home, unless the home's value exceeds \$500,000.

The *Baby Boomer's Guide to Nursing Home Care* starts at the beginning – whether a nursing home is the right option – and goes from there to discuss such important topics as finding a good nursing home, arranging for individualized care, and making health care decisions. The book includes a thorough and understandable discussion of how residents can have



nursing home costs paid by the Medicare or Medicaid programs. Tips and advice are plentiful, presented in “Words to the Wise” that appear throughout the Guide. The other consumer guide, entitled *20 Common Nursing Home Problems – and How to Resolve Them*, pulls the curtain back on specific common but illegal nursing home procedures.

Both books are written by experienced public interest attorneys from the National Senior Citizens Law Center (NSCLC), a non-profit law firm that protects the legal rights of older Americans. Each of the guides is based on the authors' real-life experience in advising nursing home residents. Both books are available from NSCLC; in addition, *The Baby Boomer's Guide to Nursing Home Care* is available at bookstores and Internet booksellers. NSCLC offers a discounted price of \$20.95 for the two guides together, plus \$4 for shipping and handling. Further details are available from NSCLC at (202) 289-6976, ext. 201, or www.nsclc.org. □



LTCCC Directors Push on CMPs at National Conference

LTCCC's directors, Cynthia Rudder and Richard Mollot, presented a session on advocating for the use of civil money penalties (CMPs) for innovative projects that improve nursing home resident care and quality of life at the National Citizen's Coalition for Nursing Home Reform (NCCNHR) conference in Washington DC in October. Based on LTCCC's report, “Funding for Innovation,” the presentation discussed findings from our national study, conducted with Charlene Harrington of the University of California with funding from the Commonwealth Fund.

Several audience members spoke about their own experience with CMPs in their states and Cynthia and Richard discussed LTCCC's current initiative to organize NY stakeholders' involvement in the use of



LTCCC Executive Director
Richard Mollot at
NCCNHR Conference

CMPs in New York, under a new grant from the New York Community Trust.

To participate in our CMP stakeholder project, please contact Sara Rosenberg at sara@ltccc.org or call 212-385-0355. To read our CMP report and information for consumers & ombudsmen, go to the Publications section of our Website, www.ltccc.org. □

GoodSearch

Now when you search the Internet you can raise money to support LTCCC's advocacy at the same time! Just go to www.goodsearch.com and type in “LTCCC” as your charity. Then, whenever you use GoodSearch to search the Internet, one penny will be donated to LTCCC! GoodSearch is powered by Yahoo!, so it is powerful and easy to use. If 1,000 people use GoodSearch just twice a day, LTCCC would receive over \$7000 a year for our work to protect the elderly and disabled!

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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."

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