

# MONITOR

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

www.ltccc.org • WINTER 2007/08



## New Strategies Needed in Fight for NH Standards

The Long Term Care Community Coalition is continuing our advocacy for passage of state and federal legislation to mandate nursing home staffing levels.

**“You know that your father was severely dehydrated. I’m talking bone-dry. How did he get this way, did they even feed him there?”**

– Daughter of a nursing home resident quoting a pulmonologist, Bayshore, NY

While this has been a crucial issue for LTCCC and other advocates for many years, it is increasingly clear that we cannot wait any longer – legislation is needed now. Poor care and quality of life persist for current nursing home residents which is often the result of inadequate numbers of staff. We think it is

**More than 80 percent of the hospitalizations occurred had a diagnosis...that indicated that the hospitalization was potentially avoidable.**

outrageous that our leaders allow this broken system to continue. At the same time we are concerned that the aging baby boomer generation, along with increasing chronic medical conditions in the entire population (one result of widespread obesity), will

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## U.S. Court Rules on Nursing Home Feeding Assistants

The United States Court of Appeals for the Ninth Circuit issued a ruling at the end of the summer upholding the federal regulation allowing nursing homes to use paid feeding assistants with as little as eight hours of training and minimal direct supervision. This case was brought by the plaintiffs, the Long Term

**“Feeding is not simply the insertion of nutrients into an orifice.”**

Care Ombudsman Program of Washington State and the Resident Councils of Washington against the Secretary of the U.S. Department of Health and Human Services (2007 U.S. App. LEXIS 20956). Richard Molloy, on behalf of the Long Term Care Community Coalition, filed an amicus curiae (friend of the court) brief on behalf of the plaintiffs. LTCCC also worked to get other organizations in NY State and across the country to join in support of the plaintiffs.

While LTCCC and the other consumer organizations who supported this lawsuit understand and are deeply concerned about the many nursing home residents who go unfed – malnourishment and dehydration are two significant issues for nursing home residents – we do not believe that permitting the use of poorly trained feeding assistants is the way to address the problem.

Some of our top objections to allowing feeding assistants:

1. **Insufficient Training:** Since passage of the Nursing Home Reform Law in 1987, which responded to the terrible scandals in the nursing home industry, federal regulators took the position that in order to provide care to nursing home residents, an unlicensed caregiver must have a minimum of 75 hours of training and undergo certification. LTCCC and many other advocates and experts around the country have been working for years to increase training require-

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## — NY State Requests Proposals for Use of Nursing Home Fines —

### Consumer Stakeholders Disappointed

Federal Civil Monetary Penalties (CMPs) and State CMPs/fines are imposed by the regulatory agencies that license nursing homes if a nursing home does not comply with regulatory standards. In 2004, New York State passed a law, long advocated for by LTCCC, creating a Nursing Home Improvement Fund, permitting the state to use funds from civil monetary penalties and state fines to fund projects to improve nursing home care. With funding from the New York Community Trust, LTCCC brought together a coalition of consumers, consumer representatives and ombudsmen in a *CMP Stakeholder Summit* to develop recommendations to advise the state as it developed its first “request for proposal” (RFP) for its distribution of civil money funds.

Using the findings from a national study funded by the Commonwealth Fund and conducted by LTCCC on the use of CMP funds across the country, the stakeholders urged the Department of Health (DOH) to encourage non-provider projects (i.e. ombudsmen projects, advocacy group projects) that focus on meaningful change and that demonstrate evidence that the project goals have broad stakeholder (i.e. residents,

**“It will be a terrible irony if the very homes that were fined for failing to prevent pressure ulcers are awarded CMP money.”**

families, staff) support. In addition, the group urged DOH to authorize funds for projects that are innovative and go beyond current regulatory requirements and ordinary budget items. They should improve residents’ quality of care and quality of life, encourage person directed care, promote consumer advocacy and involvement and stimulate and support the spread of “culture change.” Consumer focused projects such as work with family councils, resident councils, consumer advocacy organizations, and ombudsman projects were suggested as targets for funds.

After working with DOH for over a year and a half, we were disappointed to find that the final RFP issued in August, 2007 had few if any of the recommendations made by the 21 consumer participants. The funding, which is to be used to reduce pressure ulcer rates through the use of an evidence-based model called “On-Time Quality Improvement for Long Term Care,” is only available to nursing home providers. In addition, it is only available to those providers whose pressure ulcer rates for high risk residents average 10 percent or more. Thus, non-providers cannot apply and the funds will be used

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## — Children’s Health and Medical Protection Act of 2007 —

The Children’s Health and Medical Protection Act of 2007 (H.R. 3162), also known as the CHAMP Act, is a bill that reauthorizes the State Children’s Health Insurance Program (SCHIP), which currently provides health insurance for over 6 million children. CHAMP passed both Houses of Congress but was vetoed by President Bush in October. The CHAMP Act would provide health insurance to an additional 5 million low-income children.

Nursing home providers are angry about CHAMP’s one-year freeze on Medicare payment increases to skilled nursing facilities. They are lobbying our representatives in Congress to turn their backs on the people this bill protects. However, LTCCC and many other consumer advocates strongly support this bill because it increases important benefits for the elderly. We do not feel that the nursing home industry deserves an automatic increase in payments when so

many are providing inadequate care and are not held accountable for how they spend the money they receive from our tax dollars.

Currently, 45 million Americans lack health insurance coverage. When SCHIP was created in 1997, the children’s program focused on families with incomes less than twice the poverty level. But many states, including New York, have obtained federal waivers to cover children with somewhat higher family incomes, because those families cannot afford private insurance. SCHIP has reduced the number of uninsured children by one-third since 1997. However, it was set to expire on September 30, 2007 and if not reauthorized, could leave millions of children without health insurance. Currently, it is being sustained through temporary funding.

The CHAMP Act includes provisions to strengthen Medicare, control out of pocket costs, and to help

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## NY State Requests...

*continued from page 3*

to help providers meet current regulatory requirements they may have not met and for which they are already being reimbursed.

While we agree that the problem of pressure ulcers is an important one, we do not believe that CMP funds, which are funds received from nursing homes with serious deficiencies, should be given to homes who cannot meet current regulatory requirements in relation to preventing pressure ulcers. DOH should work to reduce preventable pressure ulcers through appropriate enforcement remedies and by requiring nursing homes with high preventable pressure ulcer rates to use their own funds to either hire consultants or install the On-Time Quality Improvement for Long Term Care system. It will be a terrible irony if the very homes that were fined for failing to prevent pressure ulcers are awarded CMP money – what kind of message does this send?

We discussed our disappointment with the new Deputy Commissioner of Long Term Care, Mark Kissinger. He agreed to work with us on a second RFP which would better meet our suggestions and also agreed to amend the current RFP on pressure ulcers to require community support (residents, families and direct care staff) for the project. We were pleased to see that this has been added to the current RFP.

We look forward to working with the new leadership of the Department in the hope that the remaining CMP funds (and future funds) will be used in ways which we believe will better benefit residents.

### WHAT YOU CAN DO!

Send a message to let NYS officials know that Civil Money Penalties collected from poorly performing nursing homes should not be given to homes to help them provide the care for which they are already being paid. Fines should be used for activities that improve resident care and quality of life. Non-provider projects should be encouraged.

Visit the Long Term Care Citizen Action Center at [www.ltccc.org](http://www.ltccc.org) to send a quick message now or see the Action Alert Mailing List in this issue for direct contact information. □

## Children's Health...

*continued from page 3*

ensure that senior citizens continue to have access to their doctors of choice. CHAMP responds to efforts to privatize Medicare by phasing out overpayments to private health organizations like HMOs and Medicare Advantage plans. More than eight million of the 43 million Medicare beneficiaries are in private plans.



US Representative Charles Rangel, Sponsor of the CHAMP bill

According to the Congressional Budget Office, Medicare pays private insurance companies on average 12 percent more than the cost to cover the same seniors under the traditional Medicare program. The House bill would eliminate the differential, saving \$50 billion over the next five years and \$157 billion from 2008 to 2017. LTCCC and other advocates strongly believe that the purpose of Medicare is to provide care for beneficiaries, not establish a profitable industry. If resources are scarce, why are we pumping extra money into private providers who are less efficient than the traditional Medicare program?

The bill would be financed in part by increases in tobacco taxes (from 45 cents a pack to 84 cents) and the cuts in subsidies to private Medicare insurance plans. Additional information about the CHAMP Act can be found at <http://majorityleader.house.gov/docUploads/champ%20act.pdf>.

### WHAT YOU CAN DO!

Visit LTCCC's Long Term Care Citizen Action Center at [www.ltccc.org](http://www.ltccc.org) and send a message to your federal representatives in support of the Champ Act. It is easy to use and only takes a minute to make your voice heard! □

# State Progress on Regulations and LTCCC Work on Affordability

### State Task Force Update: Little Movement

As mentioned in the previous issue of *The Monitor*, the 2004 Assisted Living Law created a state task force to update and review requirements and regulations applicable to adult care facilities and assisted living residents. The task force was scheduled to convene in July to discuss the revision of current adult home regulations to better promote resident choice, autonomy and independence. LTCCC submitted recommendations, including the incorporation of resident and family input into critical decisions and changes made around the home that will affect residents and their families. Unfortunately, the task force was unable to meet because only LTCCC and one other member responded to the request for comments. More information can be found at [www.assisted-living411.org](http://www.assisted-living411.org).

### Assisted Living Regulations: Still Waiting

The public comment period on proposed regulations ended in May 2007. As of this date, we are still waiting for the Department of Health and the Governor's office to either promulgate the proposed regulations as is or with minor changes or republish for public comment new proposed regulations with significant changes. Even though the law passed in 2004, many assisted living residents live in homes without any mandated rules or government oversight. LTCCC will continue to monitor and keep readers posted on developments.

### LTCCC's Assisted Living Committee Focuses on Affordability

As discussed in the last edition of *The Monitor*, the current focus of the LTCCC Assisted Living Committee is how to make assisted living affordable for the indigent and middle class. LTCCC will be issuing a white paper early next year presenting consumer recommendations for New York State policy makers.

Following are some details of the committee's discussions. Providing affordable assisted living presents a unique challenge since funding must cover both medical and personal services as well as housing. The committee is examining a number of different issues: how to fund services for the indigent, give developers incentives to provide affordable housing, aid non-indigent consumers to help pay for services and housing, and use supplemental programs such as food stamps,

SSI and Older Americans Act for services.

The first two meetings of the committee focused on determining what Medicaid option to suggest using to cover the cost of medical services for the indigent. It looked into three options: the current State Plan, a Medicaid Home and Community Based Services (HCBS) waiver or the Optional HCBS waiver. The State Plan has the advantage of guaranteeing coverage for all people eligible for Medicaid. However, it is unclear whether the federal government, which must approve all State Plans, would permit the use of Medicaid for non-nursing home care.

In addition, we are concerned that the state would not want to use this approach because of the uncertainty of knowing how many people would have a right to such services if all Medicaid eligible individuals must be covered. The HCBS has the advantage for consumers of granting eligibility to individuals at a higher income level than regular Medicaid (300% of SSI). However, it would permit the state to set a cap for either the number of people to be served or number of dollars to be spent and is only available to individuals eligible for nursing home care. Finally, the optional HCBS Benefit would allow states to provide such services under the state plan and expand the financial eligibility (up to 150% of SSI) and would be available to individuals who do not need nursing home care, but, the state can limit the number of people accessing the services by implementing waiting lists.

The third meeting focused on how to suggest funding the housing portion of assisted living services. The committee examined possible incentives for developers to build affordable assisted living facilities and ways to help consumers cover the cost of housing. Government and private companies have numerous incentives for developers to build facilities that would operate at below the market rate. These incentives come in the form of loans, grants and tax incentives to either build or convert low cost housing. However, there are three different government agencies that operate funding programs for developers of affordable assisted living facilities, the system is difficult to navigate and many programs have limited funds available.

The committee also looked at other ways to help  
*continued on page 11*

# New Strategies...

*continued from page 1*

put a significant strain on the nursing home system and its workers. The time is now to shore up the system and ensure that we can care for current and future nursing home residents.

**Politicians tell us nothing will change until they hear from their constituents.**

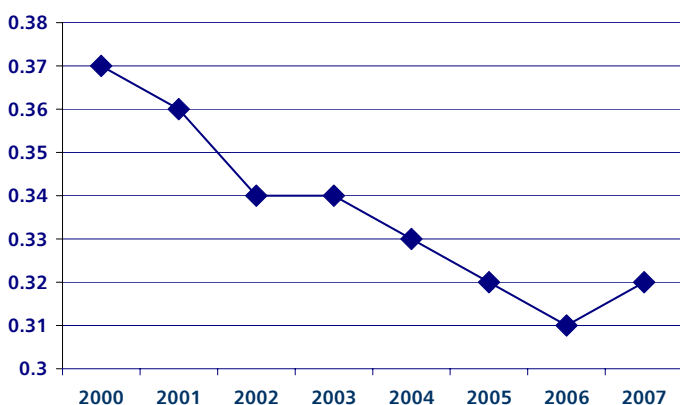
## The Need for Higher Staffing Levels

Multiple studies have shown the association between quality of care and staffing levels. The 2001 Center for Medicare and Medicaid Services (CMS) report to Congress indicated that nursing homes need a total direct care staffing level of about 4.1 hours per resident day to prevent harm. At congressional hearings to mark the 20th anniversary of passage of the Nursing Home Reform Law (landmark federal legislation that set quality standards for nursing homes, also known as OBRA '87), Charlene Harrington, one of the top researchers in the field, gave a simple explanation for the persistent poor quality of nursing homes: "the basic problem is that we have inadequate staffing levels."

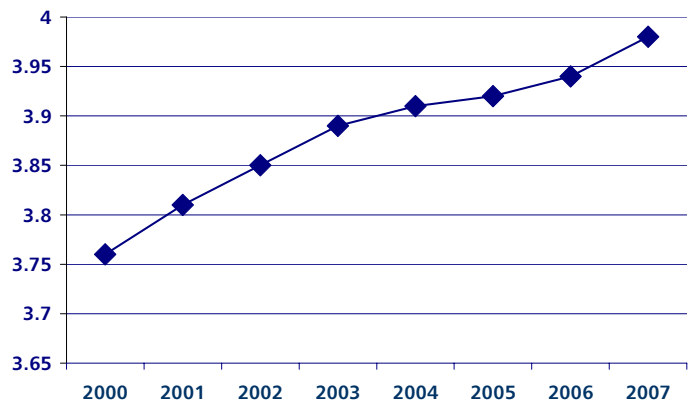
**Who will speak out for those who need nursing home care if we don't?**

And, according to a 2007 report by the American Health Care Association, a provider association, the level of resident dependency has increased, while registered nurse (RN) staffing time has decreased. Their data indicate that although the total direct care staffing level increased slightly, it is still far below the level required to prevent harm to residents as reported by the CMS study.

**Average RN Hours Per Patient Day (HPPD)**



**Trend in ADL Dependence**



The New York Office of the Attorney General, in its 2006 report, included data that demonstrated that 98% of New York State nursing homes have insufficient staff to provide adequate care.

**Hiring more nursing professors to train more nurses is a viable solution for the nursing shortage. Using the nursing shortage as an excuse to provide a poor quality of care is inexcusable.**

Staffing numbers may even be lower and more dangerous for nursing home residents. The data used in these studies come from the Online Survey Certification and Reporting System (OSCAR) which is provider reported. A recent study in the *Gerontologist* (2007), indicated that such data over-estimated staffing levels, particularly for RNs.

## Current Legislation

**NEW YORK STATE:** Readers of *The Monitor* and other LTCCC materials know that NY Assemblyman Richard Gottfried has introduced a number of bills over the years that would help ensure safe staffing levels. Assemblymember Gottfried currently has two bills which we strongly support. The first bill, the nursing home diversion act, would prohibit nursing homes with dangerously low staffing levels from receiving new residents until their staffing improved. The second bill establishes minimum staffing levels for nursing homes at a little over four hours per resident day, the basic safety standard set forth in national studies. Neither bill has been introduced in the State Senate which, along with support from Governor Spitzer, is critical for passage.

**FEDERAL:** Congressman Henry Waxman of California introduced a bill to establish minimum

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## New Strategies...

*continued from page 6*

staffing levels in 2002 and 2005. This bill, on which the New York minimum staffing bill is based, would provide for meaningful minimum standards. However, the bill did not get a lot of support and expired this year (it was not reintroduced as of this writing).

**In 1975, *Time Magazine* reported:**

*It is no secret that, with some notable exceptions, the nation's 23,000 nursing homes are dismal places owned by investors far more interested in turning a fast profit than in caring for their elderly patients. — Have we made substantial progress in the three decades since these words were written? Where will we be in another five years or in thirty, as we face the difficult choices for our loved ones and ourselves?*

## New Advocacy Strategies Needed

As advocates for nursing home residents and caregivers, it is painful to fight for better care year after

year and not see significant improvement. This fall we are launching a new campaign to support minimum staffing levels. See page 13 of this newsletter for details on the campaign and how you can make a difference!

The time is now for our state and federal government to mandate safe minimum nursing home staffing levels – there are no more excuses.

**WHAT YOU CAN DO!**



Please tell your friends, colleagues and relatives about the LTCCC nursing home staffing campaign. We all need to raise awareness about the need for higher nursing home staffing levels. Send a message from the Long Term Care Citizen Action Center at [www.ltccc.org](http://www.ltccc.org). Use the toolkit to make your voice heard, and to help others make their voices heard. The nursing home industry has paid lobbyists to speak out for them. Who will speak out for those who need nursing home care if we don't? “ □



## Enforcement Actions Against Nursing Homes

### CIVIL MONEY PENALTIES<sup>1</sup> AGAINST 17 NURSING HOMES: 6/1/07 – 8/31/07<sup>2</sup>

| NAME OF HOME                               | LOCATION         | SURVEY DATE       | AMOUNT                    |
|--|------------------|-------------------|---------------------------|
| Bishop Charles Maclean Episcopal           | Queens           | 4/6/07            | \$46,897.50               |
| Blossom Health Care Center                 | Rochester        | 3/23/07           | \$7,500.00 <sup>3</sup>   |
| Bronx Lebanon Special Care Center          | Bronx            | 5/10/07           | \$21,190.00               |
| Crest Hall Care Center                     | Middle Island    | 8/25/06           | \$65,350.00               |
| Elant at Brandywine                        | Briarcliff Manor | 9/11/06           | \$80,250.00               |
| Grand Manor Nursing & Rehab Center         | Bronx            | 4/11/07           | \$1,950.00                |
| Harbour Health Multicare Center for Living | Buffalo          | 11/9/06, 12/29/06 | \$31,011.32 <sup>4</sup>  |
| Marcus Garvey Nursing Home                 | Brooklyn         | 11/22/06          | \$5,000.00 <sup>3</sup>   |
| Midway Nursing Home, Inc.                  | Maspeth          | 5/25/07           | \$2,925.00                |
| Mountainside Residential Care Center       | Margaretville    | 3/20/07           | \$57,850.00               |
| Schuyler Hospital LTCU                     | Montour Falls    | 5/11/07           | \$4,940.00                |
| Terence Cardinal Cooke HCC                 | Manhattan        | 2/21/07           | \$30,975.00 <sup>4</sup>  |
| Terence Cardinal Cooke HCC                 | Manhattan        | 5/17/07           | \$3,250.00                |
| Vivian Teal Howard RHCF                    | Syracuse         | 1/31/07           | \$215,212.50 <sup>4</sup> |
| Wartburg Lutheran Home for the Aging       | Brooklyn         | 3/9/07            | \$6,500.00                |
| Wartburg Nursing Home                      | Brooklyn         | 3/9/07            | \$6,500.00                |
| The Waters of Eden                         | Eden             | 3/20/07           | \$3,120.00                |
| Williamsville Suburban, LLC                | Williamsville    | 4/29/07           | \$4,550.00                |

<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 go to [www.nursinghomes.nyhealth.gov](http://www.nursinghomes.nyhealth.gov) and click on the inspection tab for each nursing home. This list will be posted on LTCCC's website every three months.

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

<sup>4</sup>Amount reflects a 25% reduction due to financial hardship and waiving of hearing after deadline.

## Positive Changes for Levying and Collecting CMPs

In our Spring 2007 issue we reported that the CMS (Centers for Medicare and Medicaid Services) regional office responsible for New York State reduced a proposed civil money penalty of \$104,500 to \$650 for “financial hardship.” We were appalled. The home, Riverview in Owego, has had many repeat problems over the years. Due to our advocacy on this issue, CMS national office now requires that if any CMS regional office wants to significantly reduce a proposed CMP, it must get approval from the national office in Baltimore.

In addition, recent impositions of CMPs have indicated that CMS is using other methods to respond to a facility's request for a consideration of financial

hardship. In some cases, CMS has agreed to accept the payment in installments. These installments generally include interest. This was a solution that LTCCC had suggested to CMS. [i.e. Crest Manor, Bishop Charles Maclean, and Harbour Health in the table above.] In addition, when facilities that missed the opportunity to waive their right to a hearing and thus have their fines reduced 35% requested a consideration due to financial hardship, CMS granted them only a 25% reduction rather than the full 35%. [i.e. Harbour Health, Terence Cardinal Cooke and Vivian Teal Howard.]

We are very pleased with these changes and commend CMS for taking these important steps. □





# Enforcement Actions Against Nursing Homes

## STATE FINES AGAINST 19 NURSING HOMES: 6/16/07 – 9/15/07<sup>1</sup>

| NAME OF HOME                                | LOCATION      | DATE OF SURVEY | AMOUNT <sup>2</sup> |
|---|---------------|----------------|---------------------|
| Bellhaven Nursing and Rehab Center          | Brookhaven    | 2/9/07         | \$1,000             |
| Betsy Ross Rehab Center                     | Rome          | 9/21/06        | \$1,000             |
| Crest Hall HRF                              | Middle Island | 8/25/06        | \$4,000             |
| Dr. William O. Beneson                      | Queens        | 6/22/06        | \$4,000             |
| Dr. William O. Beneson                      | Queens        | 7/26/06        | \$2,000             |
| Eden Park Health Care Centre Inc.           | Cobleskill    | 11/7/06        | \$1,000             |
| Flushing Manor Care Center                  | Queens        | 2/26/04        | \$1,000             |
| Folts Home                                  | Herkimer      | 2/26/07        | \$2,000             |
| Grandell Rehab & Nursing Center             | Long Beach    | 9/28/06        | \$1,000             |
| Harding Nursing Home                        | Waterville    | 1/5/07         | \$1,000             |
| Highland Nursing Home Inc.                  | Massena       | 11/1/00        | \$1,000             |
| Highland Nursing Home Inc.                  | Massena       | 11/16/05       | \$2,000             |
| Northwoods Rehab and Extended Care Facility | Moravia       | 3/2/07         | \$2,000             |
| Norwegian Christian Home and Health Center  | Brooklyn      | 2/6/06         | \$1,500             |
| Parkview Care and Rehab Center Inc.         | Massapequa    | 5/1/07         | \$3,000             |
| Somers Manor Nursing Home                   | Somers        | 3/14/06        | \$3,000             |
| Sutton Park Center                          | New Rochelle  | 11/29/06       | \$2,000             |
| Terence Cardinal Cooke HCC                  | Manhattan     | 2/9/07         | \$3,000             |
| Terence Cardinal Cooke HCC                  | Manhattan     | 2/21/07        | \$3,000             |
| United Odd Fellow and Rebekah Home          | Bronx         | 12/15/05       | \$6,000             |
| Van Rensselaer Manor                        | Troy          | 3/23/06        | \$3,000             |
| Workmens Circle Multicare Center            | Bronx         | 10/11/05       | \$4,000             |

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 7 Nursing Homes: 6/16/07 - 9/15/07<sup>1</sup>

| NAME OF HOME                          | LOCATION      | IJ, SQC or G | SURVEY DATE | CMP <sup>3</sup> | ACTIONS <sup>4</sup>                  |
|---------------------------------------|---------------|--------------|-------------|------------------|---------------------------------------|
| Buena Vida Continuing Care and Rehab  | Brooklyn      | IJ           | 7/11/07     | x                | State Monitor, DPOC, Inservice, DOPNA |
| Cabrini Center for Nursing & Rehab    | Manhattan     | IJ/SQC       | 8/20/07     | X                | State Monitor, DPOC, DOPNA            |
| Cold Spring Hills Center for Nursing  | Woodbury      | GG           | 8/8/07      |                  | DPOC, Inservice, DOPNA                |
| Jewish Home and Hospital for the Aged | Manhattan     | IJ           | 7/25/07     | X                | DPOC, Inservice, DOPNA                |
| Mount Loretto Nursing Home            | Amsterdam     | SQC          | 8/10/07     | X                | DPOC, Inservice, DOPNA                |
| Mountainside Residential              | Margaretville | GG           | 6/28/07     |                  | DPOC, Inservice, DOPNA                |
| Stonehedge Health & Rehab Center      | Rome          | IJ           | 8/31/07     | X                | State Monitor                         |

<sup>1</sup> As reported by the Department of Health (DOH). For more detailed information go to [www.nursinghomes.nyhealth.gov](http://www.nursinghomes.nyhealth.gov) and click on the inspection tab for each nursing home.

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

<sup>3</sup> Recommendation to CMS.

<sup>4</sup> 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.

## U.S. Court Rules...

*continued from page 1*

ments so that workers are better equipped to care for residents and their many needs. In fact, New York and other states have officially recognized the need for highly trained staff by requiring that nurse aides have a minimum of 100 hours of training! The new feeding assistant regulation only requires 8 hours of training, representing a giant step backward.

2. **Feeding is Important:** Feeding is not simply the insertion of nutrients into an orifice. Common sense dictates that individuals who are too frail to feed themselves are likely to have other physical and cognitive frailties that require attention of more – not less – trained staff. This means that time spent to help with feeding provides an opportunity for a trained caregiver to detect other issues and also to be vigilant about problems in the feeding process itself, such as packing food in one's cheeks which can result in a serious choking hazard.

3. **Feeding Assistants = More (Not Less!) Strain on Staff:** The government claims that feeding assistants will supplement – not replace – trained staff. We believe that, unfortunately, this is (at best) wishful thinking. Nursing homes will not be given any additional money to hire feeding assistants. The federal Centers for Medicare & Medicaid Services (CMS) has in fact stated that “because feeding assistants will likely be paid at a minimum wage, which is less than the wage paid to certified nurse aides, facilities... may incur less cost than if they had hired additional certified nurse aides to perform feeding and hydration duties.”

4. **Dehumanizes Both Resident and Staff:** CNAs provide over 90% of the care that residents receive. Yet studies on working conditions (including LTCCC's, see our publications page at [www.ltccc.org](http://www.ltccc.org)) indicate that one of the biggest problems for direct care staff is that the nursing home environment makes it impossible for them to feel like they are able to really provide care for their residents. Feeding assistants will only exacerbate a situation that is already bad in many nursing homes. They are “task-oriented” workers, focused on the task to be done rather than the resident as a person. Nursing home residents deserve – and need – to be cared for as whole persons; they are not merely the subjects upon which tasks are performed. It is critical for both their emotional and physical well-being that they be cared for by people who are fully involved in provid-

ing care, not merely coming in to perform a task.

5. **A Step Backwards:** The introduction of feeding assistants clashes with the national movement towards resident centered care and “culture change.” “Culture change” is the term used to describe the growing movement in nursing home care which focuses on changing the way care is delivered by making it more resident centered and giving direct care workers a more meaningful role in the residents' lives and the “culture” of the nursing home. According to the Pioneer Network, a leader in the culture change movement, “Providers that have made substantial progress in culture change have clients (be they elders or individuals living with disabilities) who truly direct their own care and make their own choices about how they spend their time. The workers in these organizations are highly involved in decisions that are relevant to their jobs and the people they care for.”

### What is happening in New York?

The NY Department of Health has proposed rules which were submitted to the State Hospital Review and Planning Council's Codes and Regulations Committee in September (the Council is the state body that will review the proposed regulations). The proposal would:

1. Require a minimum of 15 hours of training to include the following topics: residents' rights, infection control, safety and emergency procedures, communications skills, changes in resident's condition, assistance with eating & hydration, plus feeding techniques. [This translates to roughly two hours per topic.]

2. Not require competency testing.

3. Permit feeding assistants to work for nursing home or be provided by outside contractor.

4. Require criminal history background checks.

5. Not provide any additional money to hire feeding assistants. [Where would this money come from? Would the providers take a reduction in profits or subtract it from their spending on direct care workers overall?]

6. Only allow residents with non-complicated feeding problems to be fed by an assistant, as chosen by the charge nurse “based on a registered professional nurse's assessment and the resident's latest assessment and plan of care.” [No requirement to see if resident wants feeding assistant help, for ongoing assessment to make sure that resident is benefiting or that resident's “uncomplicated” status has not changed since their last overall assessment.]

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## Action Alert Mailing List

### NEW YORK STATE OFFICIALS:

Governor Spitzer  
State Capitol, Albany, NY 12224  
Phone: 518-474-8390

E-Mail: Go to:  
<http://www.state.ny.us/governor>

Richard Daines, MD  
Commissioner, NYS Department  
of Health (DOH)  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

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

Michael Burgess  
Director, New York State  
Office for the Aging  
Agency Building #2  
Empire State Plaza  
Albany, NY 12223

Atty. General Andrew Cuomo  
The Capitol  
Albany, NY 12224-0341  
(518) 474-7330

### 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](mailto:speaker@assembly.state.ny.us)

Assemblymember Richard N. Gottfried, Chair,  
Committee on Health  
[gottfrr@assembly.state.ny.us](mailto:gottfrr@assembly.state.ny.us)

Assemblymember Jeffrey Dinowitz, Chair,  
Committee on Aging  
[dinowij@assembly.state.ny.us](mailto:dinowij@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](mailto:bruno@senate.state.ny.us)

Senator Martin Golden  
Chair, Committee on Aging  
[golden@senate.state.ny.us](mailto:golden@senate.state.ny.us)

Senator Kemp Hannon  
Chair, Committee on Health  
[hannon@senate.state.ny.us](mailto: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](http://www.ltccc.org).

### FEDERAL OFFICIALS:

To contact your federal representatives visit our action alert center at [www.ltccc.org](http://www.ltccc.org) or call the congressional switchboard 202-225-3121.



## U.S. Court Rules...

*continued from page 10*



Send a message to the State Hospital Review and Planning Council, the Department of Health and the Governor's office urging them to:

1. Make sure that feeding assistants are in addition to other direct care staff, and not used as cheap substitutes, by monitoring staffing levels at nursing homes using feeding assistants;
2. Require that only residents who want help by a feeding assistant receive it (for residents who lack competency to make such decisions than a family member if available must agree);
3. Require on-going assessment of "non-complicated feeding problems;" and
4. Conduct an analysis after one year of feeding assistant use to assess whether or not it is benefiting residents.

Go to LTCCC's Citizen Action Center at [www.ltccc.org](http://www.ltccc.org) to send a quick, free message on this issue or see the Action Alert Mailing List in this newsletter for contact information. □

## Assisted Living Update...

*continued from page 5*

fund affordable assisted living housing such as Section 8 Housing Choice Vouchers (HCVs), which places money in the hands of the consumer to choose housing in the private market. This would allow qualifying participants to select assisted living facilities that accept the housing choice voucher. However, there is a lack of sufficient government funding and there are no requirements for assisted living facilities to accept the HCVs.

The committee also compared the benefits of converting current housing developments into assisted living facilities versus creating new assisted living developments. Converting existing housing developments would allow some residents to take advantage of the Senior Citizen Rent Increase Exemption (SCRIE) which exempts low income senior citizens, 62 and older, from future rent increases.

The committee will continue to meet through the end of the year on this issue.

LTCCC will release the White Paper in January or February 2008. The White Paper will be available on our website ([www.ltccc.org](http://www.ltccc.org)) when it is released. □

## — NYS Comptroller DiNapoli Audits Ombudsman Program —

The New York State Long Term Care Ombudsman Program (LTCOP), was the subject of an audit by the NY State Comptroller's office. The Ombudsman Program trains and certifies volunteers to investigate and resolve complaints made by and on behalf of residents of nursing homes and other licensed long-term care facilities. According to State Comptroller Thomas P. DiNapoli, the review of SOFA's activities from Oct. 1, 2004 through Sept. 30, 2006 included expenditures made by SOFA's central office and two local ombudsman offices: those for New York City and Suffolk County.

The audit found that payroll expenses made by SOFA's central office and localities were appropriate. However, the review revealed that 88% of a sample of non-payroll charges to the Ombudsman Program by SOFA's central office were not program related. During the two-year audit period, which occurred prior to the election of Governor Spitzer and the appointment of current SOFA Director Michael

Burgess, the Comptroller's office found that SOFA made many high-value charges unrelated to the aims of the Ombudsman Program, specifically more than \$18,000 on furniture for the office of the executive deputy director, \$3,400 for out-of-state air travel to conferences and meetings, and more than \$23,000 on a aging-related service contract with the State University of New York Research Foundation at Albany.

Federal regulations establish standards that govern allowable non-payroll costs, requiring that costs be necessary, reasonable and allocable to the program. Officials

from the Department of Health and Human Services (DHHS), which is SOFA's federal funding agency, advised the Comptroller that they would allow for SOFA's previous counts of misspending. However, the DHHS has stressed that SOFA is to discontinue this practice effective Jul. 1, 2007.

A copy of the audit may be accessed at <http://www.osc.state.ny.us/audits/allaudits/093007/06s76.pdf>. □



## — NY State Launches Nursing Home Profile Website —

The Department of Health (DOH) has created a nursing home website for the public to access information about nursing homes. The website contains nursing home quality measures, data on inspections of nursing homes, and complaint investigations and enforcement actions conducted by DOH. Consumers can download inspection reports from the website, which note the deficiencies for which a nursing home received a citation, as well as data on nursing home residents. There is also a consumer guide to finding a nursing home that is suitable to one's needs.

The DOH New York State Nursing Home Profile allows people to search for nursing homes by name, geographic location, or interest (type of nursing home). The website identifies nursing homes with different types of special services, including respite care, nursing homes that provide long term care services to children, and adult day care. Additionally, the public may compare nursing homes based on numerous quality-of-care measures such as: the percentage of residents whose need for help with daily activities

has increased; the percentage of residents given influenza vaccine during flu season; and the percentage of residents who were assessed and given pneumonia vaccination. Another useful component of the website is a map which allows consumers to view the number and location of various nursing homes within each New York State county.

LTCCC provided input to DOH as the site was being developed and supports the site as a major step forward in providing important information on nursing home quality to the public. Our one major concern with the site is that it does not provide information on staffing, which is a key indicator of a nursing home's quality of care and of life. For staffing information, one has to refer to the federal government's Nursing Home Compare website at [www.medicare.gov](http://www.medicare.gov).

The DOH Nursing Home Profile website received the NY State Forum's 2007 "Best of the Web" award for its state-of-the-art design and user-friendliness. The website can be found at: <http://nursinghomes.nyhealth.gov/>. □



## Free Toolkit: Speak Out to Require Safe Nursing Home Staffing Standards

This toolkit has materials to help you make your voice heard, including:



1. An informative “brief” on the crisis in nursing home care, which can be distributed to elected officials, the press, etc...
2. A brief report on the cost effectiveness of safe staffing levels, to present to elected officials to counter the argument that it is too expensive.
3. A sample letter to an elected official.
4. A chart listing members of Congress who have shown support for nursing home residents.
5. A sample letter to the editor.
6. A petition form to gather signatures on safe staffing.
7. A “tell my story” form for people to describe their personal experiences.
8. Additional information & links to data resources.

This toolkit can help you and others in your community speak out in support of safe minimum staffing standards for nursing homes. Study after study has indicated that sufficient staffing is key to quality of life and quality of care. Yet while we give nursing homes billions of dollars a year, and trust them with our most vulnerable loved ones, we do not require that they maintain adequate staffing to provide decent care.

It is time that our elected officials, who sign off on payments to nursing homes, sign on to hold them responsible for having safe staffing levels. But they won't do that unless they hear from us – a lot of us – that this is an important issue.

**The toolkit is available at  
[nursinghome411.org](http://nursinghome411.org).**

**SHORT QUESTIONNAIRE FOR LONG TERM CARE CONSUMERS:  
IS THE SINGLE POINT OF ENTRY FOR LONG TERM CARE HELPING SENIORS &  
DISABLED PEOPLE GET ACCESS TO THE CARE THEY NEED?**

New York State is launching a new program for people who need long term care, "NY Connects." The purpose of NY Connects is to provide "easy access to information and assistance for people who are exploring long term care options or who are already receiving a long term care service but would like more information."

LTCCC has developed the following short questionnaire to help us assess the experience of New York seniors & disabled people, their families and other stakeholders with NY Connects. We will use this information to inform state leaders on how well the program is working and to advocate for improvements, if necessary.

NOTE: "NY CONNECTS" IS THE OFFICIAL STATE NAME FOR THE SINGLE POINT OF ENTRY FOR LONG TERM CARE. YOUR COUNTY MIGHT USE DIFFERENT LANGUAGE. PLEASE THINK ABOUT THE LONG TERM CARE INFORMATION SERVICES PROVIDED BY YOUR COUNTY WHEN CHOOSING YOUR ANSWERS.

1. Have you heard of NY Connects (the single point of entry for long term care)?  Yes  No  Not Sure

2. Have you used NY Connects?  Yes  No  Not Sure

[If you answered "No" to questions 1 or 2 please skip to question # 7.]

3. How did you find out about NY Connects?  Government agency  
 Community based organization or agency  Advertisement  Friend or family  
 Heard about at library or community center  Care planner, hospital/nursing home discharge planner  Other: \_\_\_\_\_

4. How did you access NY Connects?  Phone  Internet  Other: \_\_\_\_\_

5. Did you find it difficult or easy to get the information you needed?  
 Easy  Difficult Why? \_\_\_\_\_

6. Please rate how helpful NY Connects was to you:  
 Very helpful  A bit helpful  Did not make a difference  Confusing  
Why? \_\_\_\_\_

7. Comments? \_\_\_\_\_  
\_\_\_\_\_

8. I am a  Long term care consumer  Family/Friend  Other: \_\_\_\_\_

9. My county of residence is: \_\_\_\_\_

**PLEASE MAIL FORM TO: LTCCC, 242 WEST 30<sup>TH</sup> STREET, SUITE 306, NY, NY 10001  
OR FAX TO: 212-239-2801 OR TAKE SURVEY ONLINE AT [WWW.LTCCC.ORG](http://WWW.LTCCC.ORG)**

# The Monitor is Ten Years Old

It is hard to believe. The first issue of *The Monitor* was published ten years ago, in the spring of 1997. It was only four pages long and had only three articles. The “Action Alert Mailing List” included only three names and the newsletter was printed in black and white.

By 1998 *The Monitor* was in color and reached six to eight pages, included the “What You Can Do” sections, and had an expanded Action Alert List. Many of the issues we are still dealing with today were reported on early in our publication. One of the most consistent issues written about in *The Monitor* from the very first has been on the ability of the Department of Health to monitor and hold nursing home providers accountable for care. Many articles were written on this issue, including summaries of findings from our studies detailing problems with surveys and enforcement. As you know, we continue to confront these problems today. Nurse aide training was discussed for the first time in the Winter 1998 edition, when we reported our victory over the attempt to deregulate the nursing home industry in New York by stopping the then Governor’s proposal to reduce the training requirements for certified nurse aides. The crucial issue of nurse aide training was reported on in many succeeding articles and is still important today.

The critical issue of nursing home staffing was first broached in the Spring 1999 edition and has, unfortu-

nately, remained a persistent topic. It is one of the most important issues facing nursing home residents. In fall, 1999, we began listing enforcement actions taken against nursing homes for poor care. This has remained a staple of our newsletter, giving consumers the information they need as enforcements were made public. Over the years, we continued to add more and more information on state and federal actions. By 2000, assisted living and the *Olmstead* Decision

became a much reported on issue while nurse aide training and need for more staff remained as significant issues. By 2001, our newsletter was often twelve pages. In 2004, *The Monitor* released the first LTCCC “Report Card” on long term care governmental agencies. This Report Card has achieved significant attention over the years, even by the very leaders whose performance it addresses. Some have even quoted from it – if they received a good grade. We have continued to issue this card every year.

Last year we changed the masthead of the newsletter, adding pictures and a new motto: “Working to improve long term

care through research, education and advocacy.” However, while our newsletter continues to change, our fundamental mission continues. We hope that the newsletter will continue to provide you with information on important long term care issues, our work to protect consumers and what you can do to make your voice heard. □



## State Task Force on Assisted Living Continues to Meet

**LTCCC Committee Focusing on Making Assisted Living Affordable**

**State Task Force**

According to the Assisted Living law that passed in 2004, the State Task Force was created to update and revise the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence. The task force has been charged to make recommendations (a) minimizing duplicative or unnecessary regulatory oversight; (b) ensuring that the indigent have adequate access to, and that there are a sufficient number of enhanced assisted living residences; (c) developing affordable assisted living; (d) promoting resident choice and independence; (e) on the evaluation tool as required by section 4657 of the public health law; and, (f) on specific standards and criteria relating to the special needs certificates required by the 2004 law.

As of this date, the Task Force has accomplished (e) and (f). As readers of *The Monitor* know, we are awaiting the final promulgation of the proposed regulations for licensed assisted living regulations now that the formal comment period ended in May. The Task Force will now focus on the other tasks. Cynthia Rudder, LTCCC's director of special projects and a member of the Task Force, with the help of LTCCC's Assisted Living Committee (made up of a number of LTCCC's organizational members), will make a number of recommendations to the Task Force on these issues.

*continued on page 2*

## LTCCC's Legislative Priorities

In anticipation of a new legislative session – the first full session under Governor Eliot Spitzer – LTCCC has identified the following major legislative priorities:



## Safe Staffing Standards for Nursing Homes

Nursing homes are entrusted to care for our most vulnerable citizens, yet widespread problems persist year after year. Inadequate staffing is widely acknowledged as the most crucial factor relating to poor care. Though New York gives nursing homes a tremendous amount of public money to provide care, our nursing homes rank 30th in the nation in terms of staffing levels! New York spends the second highest amount of any state on Medicaid (the largest payer of nursing home services in NY), almost double the spending of the next highest state, yet we don't require that the nursing homes receiving our public trust and our public money be required to spend some of that money to ensure adequate care. We believe that there is something gravely wrong with this situation.

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## Friend of Nursing Home Residents Dies

Ed Kuriansky, a leading player in the nursing home scandals of the 1970s in New York and a long time friend of nursing home residents, died on July 10th. He was 63. Ed was a great man. As chief assistant to Charles J. Hynes, the Deputy Attorney General for Medicaid Fraud Control in the 1970s, he ran an undercover operation that led to the conviction of more than 50 nursing home providers and suppliers for involvement in kickback schemes. He also handled the case against Bernard Bergman, the owner of two Manhattan nursing homes who was found guilty of Medicaid and tax fraud in 1976. It was this case that opened up the scandal of the 1970s of poor care given to nursing home residents, the lack of state oversight and the large profits made by providers. Some of

you may remember when Ed asked an 81 year old to go undercover as a potential resident of a nursing home whose son was determined to get her admitted, even if he had to fork over tens of thousands of dollars in "contributions." Muriel Clark, a member of our organization, was that volunteer undercover agent. Ed was the one who thought to recruit her. He always thought of her as "gutsy." Her assignment led to arrests of three nursing-home officials for illegally soliciting donations in exchange for preferential treatment.

Although he went on to monitor and investigate other areas in the 1990s and 2000s, he continued to support the work of the Long Term Care Community Coalition. He will be sorely missed. □



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