

# M LTC Monitor

SPRING 2004 THE LONG TERM CARE ADVOCATES' NEWSLETTER

## Nursing Home Diversion Act Gains Momentum in Assembly

Coalition Calls on Senate and Governor to Support Measure That Could Save Lives

As readers of *The Monitor* know, the Coalition has been advocating for a moratorium on admissions to the states' most severely understaffed nursing homes. We believe that something must be done this year to alleviate the crisis in care in New York's nursing homes and stop the flow of vulnerable people into facilities that do not have the staff to give them adequate care. Vulnerable residents simply cannot wait for the state to pass the safe staffing bill that is stuck in both the Senate and Assembly. That bill is important, but if the state leaders can't pass it now they must do something to protect nursing home residents.

At the end of the winter 2003 legislative session, Representative Richard Gottfried picked up on our idea and introduced the Nursing Home Diversion Act (NHDA), a bill that would put into effect the moratorium by requiring nursing homes to divert incoming residents to other facilities in the area when they have staffing so low that residents are at serious risk until their staff is raised above the dangerous level. This bill would simply replicate the policy already in place for many hospital emergency rooms, which divert incoming patients to other hospitals in the area when

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## Governor Pataki Proposes Changes In Medicaid Spousal Refusal For Community Services

Governor Pataki's proposed budget, released in January, includes a proposal to eliminate spousal refusal for married couples who reside in the community. Currently, when couples reside in the community and only one spouse requires Medicaid, the sick spouse can apply for Medicaid as a single individual and the other spouse can exercise "spousal refusal" and refuse to make his or her income and resources available to the sick spouse. The ill spouse can then remain in the community and receive Medicaid services and informal care and assistance from the non-Medicaid spouse.

*"The effect of eliminating spousal refusal in the community is that non-Medicaid spouses who cannot afford to live on the Medicaid couple budgeting will have to choose between placing their spouses in a nursing home or obtaining a divorce."*

This right of spousal refusal is important because non-Medicaid spouses in the community whose spouses are receiving Medicaid home care and other community services do not have allowances to keep additional income and resources as do those people whose spouses are in institutions. In cases where refusing spouses have excessive income and/or resources, Medicaid has the right to seek recovery from the excess income and/or resources by suing the refusing spouse for reimbursement of amounts paid by Medicaid.

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## Governor Pataki Proposes Changes...

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Under the Governor's proposal, spousal refusal would be available only if the "responsible relative" (a spouse) is not residing in the household. Under this change, husbands and wives living together would have to apply for Medicaid as a couple for home care and other community services and be subject to the Medicaid income and resource levels for couples (\$950 per month and \$5,700 resources).

The effect of eliminating spousal refusal in the community is that non-Medicaid spouses who cannot afford to live on the amount allowed for Medicaid couples (\$950 per month and resources of \$5,700) will have to choose between placing their spouses in a nursing home or obtaining a divorce. If the ill spouse is placed in a nursing home, the non-Medicaid spouse can keep up to \$2,319 of the couple's total income and resources in an amount equal to the greater of \$74,820 or one-half of the married couple's total resources up to \$92,760.

The effect of eliminating spousal refusal in the community will be that many ill spouses who are now able to remain at home in their preferred, most integrated setting (as required by the United States Supreme Court *Olmstead* decision) may have no choice but to reside in institutional settings. In most cases, the state will pay more for Medicaid recipients in institutions than for those at home.

*This article was written by: by Andrew Koski, M.S.W., Deputy Director for Public Policy, Samuel Sadin Institute on Law of the Brookdale Center On Aging of Hunter College.*

**Below is the Action the Coalition Suggests You Take...**



### WHAT CAN YOU DO?

Go to our Citizen Action Center ([www.ltccc.org](http://www.ltccc.org)) and send a letter, a fax or an e-mail to the Governor, Leaders of the Legislature and your representatives, letting them know you are against this proposal.

## Nursing Home Diversion Act...

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they do not have enough staff or other resources to give adequate care to additional people. The cut off point for diversion in the Diversion Act is three hours of direct care staff time per resident per day, the number identified in a recent federal study as being the threshold below which residents had a much higher likelihood of injury.

We are happy to report that the NHDA was reported out of the Health Committee on February 10 with three new sponsors: Assembly members Colton, Pheffer and Tokasz. Thanks to the letters many of you have written to your representatives, as of this

writing it has gained another 19 sponsors! For the sake of nursing home residents, we hope that other Assembly members will join as cosponsors and that our

state Senators will also show their commitment to resident safety by sponsoring complementary legislation in the Senate. We are also urging Governor Pataki to rally behind the bill, which would provide real relief to a system in crisis.

"Does it make sense to permit nursing homes to admit more and more sick vulnerable individuals it cannot care for," said Cynthia Rudder, LTCCC's Executive Director. "Doesn't it make sense to say, 'stop taking in more residents until you have the staff to care for them?'" Year after year the state fails to pass a law requiring minimum staffing in nursing homes, the Department of Health is increasingly unable – or unwilling – to enforce even the current, lax standards... New York is increasingly becoming a place where the vulnerable elderly and disabled go to a nursing facility with the promise that they will be cared for only to have that promise broken, all too often with tragic results. The NHDA would stem the flow of people into the state's most poorly staffed nursing homes, and it would not cost the state anything.

*“Does it make sense to permit nursing homes to admit more and more sick vulnerable individuals it cannot care for?”*

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## Deputy Attorney General Speaks at Coalition Meeting



**Bill Comiskey**  
Deputy Attorney General

William Comiskey, Deputy Attorney General, Medicaid Fraud Control Unit, spoke at the March Coalition meeting in New York City. He spent the first part of his presentation discussing the past and future direction of the Medicaid Fraud Control Unit, focusing on the new Nursing

Home Initiative, which Coalition members strongly support.

Mr. Comiskey discussed the tools his unit has available to him to hold both corporations and owners accountable for the care they give. He spoke about how his unit has focused on stopping fraud in the Medicaid program, preventing patient abuse, neglect and mistreatment and seeking recovery of Medicaid funds. As readers of *The Monitor* know (see the Winter '04 edition), the Nursing Home Initiative has recently been successful taking the owners of three homes, two of which the Coalition has long urged

DOH to take action, to task. (See article below on the first nursing home owner in recent history sentenced to prison for a description of an additional investigation.)

After his presentation, Mr. Comiskey listened to Coalition members as they discussed their experiences and talked of ways they could help the work of his Unit. We look forward to a continued successful relationship with the Attorney General and his staff. □



### WHAT CAN YOU DO?

Go to our Citizen Action Center ([www.ltccc.org](http://www.ltccc.org)) and email, fax or write the Attorney General and tell him you support his work to protect long term care consumers. It is important that he hear from citizens like you that this is important. If you don't have Internet access, you can write Mr. Comiskey directly by addressing your letters to: William J. Comiskey, Esq., Deputy Attorney General, Office of the Attorney General, 120 Broadway, New York City, NY 10271.

## Nursing Home Diversion Act...

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### WHAT CAN YOU DO?

The Coalition has started a major campaign to educate our state leaders about the crisis and the need to divert vulnerable people from homes with severely low staffing. You can help by writing, calling or emailing Governor Pataki, Senate and Assembly leaders, your personal Assembly Representative & your Senator and telling them that you think that the state should protect nursing home residents this year, by passing the Nursing Home Diversion Act. See the back cover of this newsletter for contact information or visit our Citizen Action Center on our website, [www.ltccc.org](http://www.ltccc.org) to send a quick and easy fax or e-mail. It's free!

## First Nursing Home Owner in Recent History Sentenced to Prison

A Pennsylvania nursing home owner, whose residents are overwhelmingly New York State citizens, has been sentenced to four to twelve years in prison for stealing millions of dollars from New York taxpayers by fraudulently billing for services never provided to New York State Medicaid residents residing at his facility and for improperly obtaining payments from New York for services Pennsylvania was already reimbursing. David Arnold, of Athens, Pennsylvania, and his corporation, Heritage Nursing Home, Inc., were convicted this past January. In addition to the jail time, Mr. Arnold was also ordered to make \$1 million in restitution to the Medicaid program. His corporation received a \$10,000 fine.

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# Enforcement Actions Against Nursing Homes<sup>1</sup>

12-15-02 — 03-15-04

## The State Fined 7 Nursing Homes

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>DATE OF SURVEY</i>	<i>AMOUNT</i>
Brae Loch Manor	Rochester	02/19/99, 10/14/99, 12/21/99, 7/28/00	7,000
Dry Harbor	NYC	1/16/02	1,000
McAuley Manor At Mercycare	N. Hornell	09/20/02, 10/17/02	1,000
Park Ridge NH	Rochester	10/04/02	1,000
St. Barnabas NH	NYC	02/27/02	2,000
St. Johnsville	St. Johnsville	03/28/01	1,000
Williamsbridge Manor NH	NYC	07/31/02	6,000

<sup>1</sup>As reported by the Department by Health. This list will be posted on LTCCC's website every three months, two to three weeks after the end date listed above. If you want to know why a facility was cited and/or fined, you can get a copy of the Statement of Deficiencies (SOD) from the Department of Health. You will be charged \$.25 a page. Call Jim O'Meara, FOIL Officer – 518-474-8734 or e-mail – [nhinfo@health.state.ny.us](mailto:nhinfo@health.state.ny.us). Ask the Department to let you know how much it will cost to make sure that you can afford the amount. If you cannot, ask if you can look at the SOD in your regional office.

<sup>2</sup>Nursing homes are also required to post the most recent survey results.

## The State Took Other Actions At 8 Nursing Homes

In addition to the actions listed below, the following nursing homes have fines pending. 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 - Have received G's in two consecutive surveys.

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>IJ, SQC or G</i>	<i>SURVEY DATE</i>	<i>ACTIONS<sup>1</sup></i>
Bishop Maclean	NYC	IJ/SQC	02/10/04	DOPNA, POC, In-Service, State Monitoring
Grace Manor	Buffalo	Double G	11/28/03	DOPNA, POC
Green Manor	Ghent	IJ/SQC	02/20/04	DOPNA, POC, In-Service, State Monitoring
Highland Care Ctr.	NYC	IJ/SQC	01/09/04	DOPNA, POC, In-Service, State Monitoring
Our Lady of Consolation	W. Islip	Double G	02/10/04	DOPNA, In-Service
Riverview Manor	Owego	Double G	01/30/04	DOPNA, POC, In-Service
Schuyler Hosp. Inc.	Montour Falls	IJ/SQC	02/27/04	DOPNA, POC, State Monitoring
The Wartburg Home	Mt. Vernon	IJ	12/10/03	DOPNA, In-Service

**<sup>1</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 (POC):** 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.



# LTCCC's New Citizen Action Center

## Gives You the Opportunity to Make Your Voice Heard!

It is important for you to let our policy makers hear your opinion on long term care issues. We cannot make changes unless there are enough of us speaking out. The Citizen Action Center on our website makes sending e-mails, faxes or letters simple and easy. Please give it a try. Go to [www.ltccc.org](http://www.ltccc.org).

When you click on "Citizen Action Center" on the left hand side of the coalition's website's home page, you will be taken to a page that will allow you to take action on a choice of issues. For example, the page looked like this in April 2004:

**ACTION ALERT!**  
**Support the Nursing Home Diversion Act**  
Scroll down and send your message now  
**TAKE ACTION**

**FIGHT AGAINST REMOVAL OF SPOUSAL REFUSAL**  
Elimination will mean a choice between a nursing home or a divorce  
**TAKE ACTION**

**Support the Attorney General's Initiative to Hold Nursing Homes Accountable**  
Fax or Write Today  
**TAKE ACTION**

**Oppose Governor's Medicaid Proposal to Eliminate Psychological Services**  
Let Your Legislators Hear From You  
**TAKE ACTION**

When you click on "Take Action," you are taken to a page with our policy brief on the issue. You are then shown a sample letter that you can just send, edit or substitute. You are asked to put down your contact information (which will not be used for any other purpose). You decide whether you want to send an

e-mail, a fax or a letter. You click on "send message," and your message is sent. It is easy and only takes a moment or two.

In addition, the Citizen Action Center gives you quite a lot of other information. You can find out:

- Who your elected officials are with background and contact information
- Background and contact information on state officials and agencies
- Information on current legislation, key votes, state constitution
- Tips on how to write to your representatives
- Background and contact information on the Congressional delegation
- How to send a message to any state or national news media

**Try it now. Go to [www.ltccc.org](http://www.ltccc.org) and click on Citizen Action Center.** ☐



Members of the Coalition meet with Assemblyman Richard Gottfried (3rd from left) and his aide, Shay Bergin (far right) on nursing home oversight.

*We would like to thank the following for their support...*

Baker & McKenzie for its generous pro bono legal assistance

Vince Terranova of Bernstein Real Estate for the donation of our beautiful conference table and chairs

Capital Systems Inc. for the pro bono printing of *The Monitor*

## First Nursing Home Owner in Recent History Sentenced to Prison

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“We have a special responsibility to protect our more defenseless citizens from the greed of unscrupulous nursing home owners who callously fail to deliver needed health services,” said Attorney General Eliot Spitzer. “The sentence imposed today sends a clear message: nursing home owners who abandon and neglect their patients for personal gain will go to jail.”

Arnold and Heritage Nursing Home failed to deliver needed services to hundreds of New York Medicaid

*“We have a special responsibility to protect our more defenseless citizens from the greed of unscrupulous nursing home owners who callously fail to deliver needed health services.”*

recipients who resided in the home. Evidence introduced at trial established that residents were jeopardized

by Arnold’s conduct. The evidence showed that: hundreds of residents never saw a dentist during their time at Heritage; residents with swallowing problems were fed with a “turkey-baster-like” syringe because it was “quicker than feeding them with a spoon;” numerous residents with swallowing problems that went untreated developed serious conditions, including aspiration pneumonia, which may have been preventable had Heritage delivered the speech therapy that New York paid the Home to deliver; other residents developed contractures, a stiffening of joints and muscles that is properly addressed with occupational therapy. These contractures became so severe that residents lost the ability to feed and dress themselves because they could not move their hands.

This case is part of the Attorney General’s statewide Nursing Home Initiative, which examines the responsibility of nursing home owners and executives for conditions leading to poor patient care and abuse. The LTCCC and its members fully support this initiative. □

## Help Stop Untrained and Unsupervised Feeding Assistants

The Long Term Care Community Coalition (LTCCC) is opposed to the new US regulations that will significantly relax standards for nursing homes by allowing them to use feeding assistants in place of certified nurse aides.

Feeding is a critical issue for many nursing home residents. We strongly believe that people who need this type of assistance should get it. There is no excuse for the levels of malnourishment and dehydration that currently occur in nursing homes across the state and country. However, we strongly believe that the answer is not to allow nursing homes to bring in inadequately supervised workers (with a fraction of the training nurse aides receive), to provide this vital service to vulnerable residents.

Yet this is what the new regulations allow. The new standard would allow for people with 8 hours training, while nurse aides in New York currently need at least 100. Although we understand that the State is considering raising this number to 16, it is still a fraction of the training time needed. What we need are more certified nurse aides.

### Join Us in Fighting This Deregulation

The Coalition is working with the National Senior Citizen Law Center to find nursing home residents and/or their loved ones who would be willing to participate in a lawsuit to fight this new relaxation of standards.

- Any nursing home resident is eligible, whether or not he or she needs help eating.
- Friends or family members who can represent a resident in court may also be eligible.
- The lawsuit is against the government – not the nursing home – so you don’t need to be concerned about the facility being angry with the resident or his/her family.
- There will be no cost to the plaintiffs.
- The National Senior Citizen Law Center will take care of the work in carrying out the lawsuit.

Please contact Richard Mollot, LTCCC’s Associate Director, if you are interested in participating or would like more information. You can call him at (212) 385-0355 or e-mail him at [richard@ltccc.org](mailto:richard@ltccc.org). □

## **Help The Long Term Care Community Coalition Identify Assisted Living Facilities That Should Be Licensed Because Their Residents Need Significant Care**

New York State currently requires adult homes to be licensed, but assisted living providers have no licensing requirements and their residents – who are often vulnerable – have virtually no protections. You can help protect consumers by telling us about facilities in your community that are calling themselves assisted living but should be licensed as an adult home because they have residents who need significant care. We will present names of these facilities to the Department of Health. If they are not already licensed as adult homes, the Department will investigate.

### **Report Of Facility That You Think Should Be Licensed**

**FACILITY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**COUNTY:** \_\_\_\_\_

Please cut out this section and mail to: LTCCC Look-A-Likes, 242 West 30th Street, Suite 306, New York, NY 10001 or fax 212-239-2801. You can also email this information to [richard@ltccc.org](mailto:richard@ltccc.org).

## **Improving Working Conditions in Nursing Homes Look for Guidebook in Summer, 2004**

In June 2003, the Long Term Care Community Coalition (formerly the Nursing Home Community Coalition) developed indicators of a “good” working condition for direct care staff in order to help facilities measure the quality of their staff working conditions. The released report, “What Makes for a Good Working Condition for Nursing Home Staff: What Do Direct Care Workers Have to Say,” which can be downloaded from our website: [www.ltccc.org](http://www.ltccc.org), was supported by the New York Community Trust. The

findings indicated that many of the direct care workers were unhappy.

Under a second grant from the New York Community Trust, the LTCCC has been working with two nursing homes to improve the working conditions of their staff. Using the experiences of these two homes, a guidebook for nursing home management will be published in the summer to help measure and improve job satisfaction, thus improving resident relationships with staff. □

**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

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

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

Assemblymember Steve Englebright  
Chair, Committee on Aging  
[engles@assembly.state.ny.us](mailto: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:

**Action Alert Mailing List**

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).

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United States Senate  
476 Russell Senate Office Building  
Washington, DC 20510  
Phone: 202-224-4451  
Fax: 202-228-0282  
E-Mail: Go to:  
<http://clinton.senate.gov/offices.html>

Senator Charles Schumer  
313 Hart Senate Building  
Washington, DC 20510  
Phone: 202-224-6542  
Fax: 202-228-3027  
E-Mail: Go to  
<http://schumer.senate.gov>

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*(formerly the Nursing Home Community Coalition of New York State)*

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