



LONG TERM CARE COMMUNITY COALITION
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Working to improve long term care through research, education & advocacy

LONG TERM CARE (LTC) E- NEWSLETTER - December 2009/January 2010: Volume 7, Number 10

Welcome to the [LTC E-NEWSLETTER](#), a monthly electronic newsletter of the [Long Term Care Community Coalition](#). Note to Readers: To go directly to an article, click on its page number in the Table of Contents. Once you are at the article, click on any underlined text for a link to more information or to send a message in "Spotlight on Advocacy."

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[NYS Health Commissioner Richard Daines Declines to Appeal Providers' Legal Challenge to Assisted Living Regulations: Requirements for Professional Staffing and Other Protections Nullified](#)

LTCCC has learned that NY State will not be appealing the September 11, 2009 court decision by Justice Michael C. Lynch (Supreme Court, Albany County) which granted the request of two assisted living provider lobby associations to strike down several provisions of the state's new assisted living regulations.

Most crucial of the nullified provisions, from the perspective of LTCCC and other (non-provider) stakeholders, was the requirement that a facility have at least one full time professional (RN) on staff, in some capacity, if it wants to go beyond basic assisted living licensure and be state-certified to provide

special care for people with significant dementia or state-certified to provide “aging in place” (care for individuals with increasing frailty and care needs, approaching that of needing nursing home care) in order to monitor and assess resident stability and safety.

Studies have indicated that the presence of professional nurse staff in an assisted living facility has a major positive effect on resident health outcomes. Because provider representatives, who comprised the overwhelming majority on the state task force that developed New York’s assisted living regulations, objected to the idea of having an RN on duty every day (because they felt it would affect their profits), the compromise reached (and promulgated in the state regulations, as described above) only requires providers to have an RN in the facility for a regular (full time) work week (not seven days a week) and permits them to employ the RN in a non-practicing capacity, such as in an administrative position. Despite these compromises, and the tenuous circumstance of residents in special needs and enhanced needs, providers sued the state to remove this requirement and Justice Lynch agreed that this requirement put an unfair burden on providers caring for people with special and enhanced needs, went beyond the legislative mandate as written in the law and should thus be nullified. It is important to note that the language of the law states: “In approving an application for special needs certification, the department shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident. The standards shall be based upon recommendations of the task force established by section five of the chapter of the laws of two thousand four which added this section.”

Though NY Department of Health officials have assured us that facility staffing will still have to be sufficient to meet the needs of each resident’s service plan, LTCCC is deeply concerned that without specific requirements for professional staff assisted living residents will now be at risk. We have created places for New Yorkers to “age in place” (stay in the facility as they become more frail) but will they be safe? Residents who are told they can age in place or are promised safe and appropriate care when they have dementia have lost a critical safeguard for insuring that those promises will be kept. [For more information on assisted living quality and oversight in New York visit LTCCC’s dedicated website page: <http://www.assisted-living411.org/nyassistedliving.php>.]

[Study Finds Nursing Home Inspectors Failing to Identify Problems With Feeding Assistance](#)

The Journal of the American Medical Directors Association (JAMDA) reports on a study of the effectiveness of government oversight efforts to ensure that nursing home facility staff provide proper

assistance to residents who need help eating. Because poor nutrition and hydration are common and significant problems for nursing home residents in the United States, this is an important issue.

According to the JAMDA website, “Guidelines written for government surveyors who assess nursing home (NH) compliance with federal standards contain instructions to observe the quality of mealtime assistance. However, these instructions are vague and no protocol is provided for surveyors to record observational data. This study compared government survey staff observations of mealtime assistance quality to observations by research staff using a standardized protocol that met basic standards for accurate behavioral measurement.”

The results of the study indicate that surveyors following federal guidelines failed to detect “most of these [feeding assistance] care quality issues.” Despite the finding that poor nutritional care is a pervasive problem, it is underdetected in the survey process. The study, which focuses on the adequacy of feeding assistance guidelines for surveyors, presents recommendations for revision of instructions for surveyors. The researchers call for surveyor training on this issue that fosters more accurate and consistent observation of feeding assistance issues and a “standardized protocol to organize and guide” surveyor observations.

[<http://www.jamda.com/article/PIIS1525861009001777/abstract>. {Note: only abstract is available without subscription; information for this article was obtained from the Center for Medicare Advocacy’s *Enforcement* publication.}]

[Spotlight on Advocacy: Tell LTCCC About Nursing Homes or Assisted Living in Your Community That You Are Concerned About!](#)

Too often, poor care and living conditions in residential care facilities – nursing homes and assisted living – are not addressed because people do not know where to turn to report problems. Sometimes, people are afraid that a resident will be harmed if a complaint is made by the resident or family, or a worker might not want to say anything out of fear of losing his or her job. To improve accountability in residential care, LTCCC has launched an on-line, anonymous survey for people to inform us about significant problems in the facilities in their

communities. We will use this information to make our systemic advocacy more effective by letting state leaders know about problems in specific nursing homes.

PLEASE NOTE: While we will be bringing information to the relevant authorities for their investigation in our advocacy work, we are not equipped to respond to individual problems. **If you believe that someone is in danger or at risk please contact the appropriate authorities in your community immediately** as well as letting us know. As mentioned above, all information will be kept confidential – the survey does not ask for or collect information from individuals.

To access the survey, click on the link above or go to

http://www.surveymonkey.com/s.aspx?sm=oq9QUoYdS8wCcW7Jh_2b9RJQ_3d_3d.

WE'RE ON THE WEB!

www.ltccc.org: Our main website, with access to all of our issues, policy briefs and research.

www.assisted-living411.org: For information on assisted living, including consumer issues and policies.

www.nursinghome411.org: For information on developments in nursing home care, regulation and policy issues.

LTCCC LINKS OF INTEREST:

[View the latest enforcement actions against nursing homes in New York State.](#)

[Read the latest edition of LTCCC's Newsletter.](#)

[Click Here To Make A Donation On-Line](#) or send a tax-deductible donation to LTCCC, 242 West 30TH Street, Suite 306, NY, NY 10001.

If the above links do not work (or if you are reading a printout of this newsletter) you can find these documents on our homepage, www.ltccc.org.

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