



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 –July-August 2011: Volume 9, Number 6

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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[NY Medicaid Inspector General Reportedly Forced Out; Medicaid Investigation Legislation Passed](#)

James Sheehan, the NY State Medicaid Inspector General (OMIG), has reportedly been asked to leave his position within 30 days, following complaints in the provider industry that his approach to audits and policies regarding recoupments was too "aggressive."

LTCCC leadership feels that this is a very unfortunate development for New Yorkers. LTCCC was thrilled when Mr. Sheehan agreed to come to New York and take on this role. His reputation for

fairness and concern for quality care proceeded him. From our perspective, he has implemented a number of significant and important measures, such as encouraging his staff to consider poor quality as a form of Medicaid fraud, which it is. In this respect the loss of Mr. Sheehan is yet another win for providers and loss for consumers and New York's taxpaying public. [Note: LTCCC's work with OMIG has focused on the division of his office which works to hold providers accountable for poor care (when they fail to meet the basic standards upon which their participation in Medicaid/Medicare are premised). We have not worked on or assessed the division more focused on financial audits and, therefore, cannot comment in support or against those activities. It is worthwhile to mention, though, that in recent years our state leadership has passed budgets that increasingly rely on the OMIG "recovering" large sums of money.]

Just one week after reports surfaced that the Medicaid Inspector was being forced out of office, legislation substantially curbing the powers of that office has been passed by both the Assembly and State Senate. If signed into law, the legislation would set forth new standards for the Office of the Medicaid Inspector General (OMIG) audit process.

Key requirements and provisions in the legislation:

- When OMIG audits a small sample of a provider's claims and then applies the findings to all that provider's claims, OMIG must disclose its sampling methodology, which must be statistically valid.
- When OMIG demands repayment from a provider because of an unintentional administrative or technical error, the provider will be given 30 days to submit a corrected claim.
- If a service was provided in proper compliance with Medicaid rules at the time of service, payment cannot be denied because those rules were changed later.
- Consumer protections for a fair hearing when an investigation is declared by OMIG.

[<http://nynp.biz/breaking-news/6622-is-the-omig-out>-and <http://www.nynp.biz/breaking-news/6724-legislation-passed-to-curb-omig>]

[Cobblehill And Isabella Nursing Homes Release Manual For Staff On Quality Improvement](#)

The manual, *Getting Better All the Time: Working Together for Continuous Improvement: A Guide for Nursing Home Staff*, describes how nursing home staff can work together to develop a practical quality improvement process in their nursing homes. The manual includes a number of resources to facilitate development and implementation of a quality improvement program and related activities, such as a sample form for meeting minutes, check lists for planning and tools to define issues.

[http://www.cobblehill.org/brochures/Getting_Better.pdf]

DOH Begins Accepting Applications For New Managed Long Term Care Providers

The New York State Department of Health announced in June that applications are being accepted for entities to provide long-term managed care services. Over the next few years, enrollment in Managed Long-Term Care (MLTC) plans will become mandatory for most adult Medicaid enrollees who need home and community based long-term care services for more than 120 days. More than 70,000 New Yorkers are expected to be enrolled in these programs by 2014-15.

Beginning in April 2012, enrollment in MLTC plans will be required for Medicaid enrollees living in New York City currently being served in personal care, long term home health care, certified home health agencies, as well as people who are new to long term care if they need care for more than 120 days.

Mandatory enrollment would expand throughout the rest of the state as MLTC plans become available. Among those individuals exempted, at least for now, include those in the Medicaid Assisted Living Program and those served through the Office for People with Developmental Disabilities.

[http://www.health.state.ny.us/press/releases/2011/2011-06-14_long_term_care_medicare.htm]

SPOTLIGHT ON ADVOCACY: URGE IMPLEMENTATION OF LTCCC'S RECOMMENDATIONS ON ASSISTED LIVING

Unlike nursing homes, assisted living (including adult homes, enriched housing and assisted living residences) cannot be fined for any violation that is not considered to have endangered their residents (even if it harmed them) if they correct within 30 days or have made "a good faith effort" towards correction. This permits facilities to be out of compliance, correct and then be out of compliance again and again with impunity. This may account for the persistence of repeat violations. For instance, [LTCCC's recent report on assisted living oversight in New York State](#) indicates that almost 25 percent of all medication violations are repeats.

Another serious problem is that state law only permits fines to be levied for each day ("per day") a violation exists and has not been corrected. Inspectors have to wait to see if the violation continues before referring for a fine. We strongly believe that facilities should be sanctioned for each violation they incur, not just the ones that are continuing. Even a one-time violation can cause harm to residents. If facilities are not held accountable for these violations, there is little incentive for them to meet even the minimum standards.

1. Please visit our LTC Citizen Action Center and send a message to our state leaders. There are two action alerts on assisted living: one to amend the law and the other to

improve how standards are enforced. If you can, please take a moment to respond to both action alerts, and let others know about it as well.

[\[http://capwiz.com/nhccnys/state/main/?state=NY\]](http://capwiz.com/nhccnys/state/main/?state=NY)

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 quarterly newsletter, The Monitor.
- Long term care information booklet in Chinese and English for Chinese consumers: What You Need to Know about Long Term Care.
- Tools for Stakeholders & National Report on Increasing Transparency and Consumer Involvement in States' Uses of Nursing Home Civil Money Penalties to Improve Care and Quality of Life.
- LTCCC study: Government Monitoring & Oversight of Nursing Home Care in Word 2007 or PDF.

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