



LONG TERM CARE COMMUNITY COALITION
 242 WEST 30TH STREET, SUITE 306, NEW YORK, NY 10001



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

LONG TERM CARE (LTC) E- NEWSLETTER –September 2011: Volume 9, Number 7

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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[Please support LTCCC’s work to protect the frail elderly and disabled who rely on long term care. Click here to donate \\$5 \(or whatever you care to give\).](#)

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[Feds to Begin Citing States for Failure to Appropriately Serve Elderly & Disabled](#)

According to the U.S. Supreme Court’s 1999 [Olmstead decision](#), the unnecessary institutionalization of people with disabilities, including the elderly, is a form of unlawful discrimination under the Americans with Disabilities Act (ADA). Unfortunately, in the 12 years since the decision, implementation has been slow across the country, with large numbers of

people being sent to nursing homes despite their being able to safely live in the community with appropriate care and services.

The Kansas Health Institute (KHI) [reports](#) that the U.S. Department of Health and Human Services is expected to cite several states for not doing enough to help disabled people live in communities rather than in institutions. According to KHI, Renee Wohlenhaus, a deputy chief in the Disability Rights Section of the Civil Rights Division of the Department of Justice, said states are only allowed to have waiting lists for services if they have an *Olmstead* plan that spells out how long someone could expect to wait. Wohlenhaus said that states without Olmstead plans in place would have difficulty defending their waiting lists in court.

The KHI report also states that

Wohlenhaus said her office also has been reviewing:

- State policies that try to limit spending by restricting access to community-based services until a person with a disability is on the brink of institutionalization;
- People with disabilities being admitted to nursing homes even though their assessments show they're capable of living in the community;
- State hospitals for the mentally ill discharging patients to homeless shelters rather than to community-based residential programs.

<http://www.khi.org/news/2011/jul/22/feds-question-states-services-disabled/>

New Federal Requirements For Reporting Suspicion of a Crime in Long-Term Care Facilities

Under Section 2046 of the federal Affordable Care Act, all long term care facility staff - including employees, owners, operators, managers, agents and contractors of any facility that receives at least \$10,000 in federal funding - now have stricter requirements for reporting to law enforcement suspected crimes against residents. For the purpose of this section, a long term care facility includes nursing homes, hospices that provide long term care, and intermediate care facilities for the mentally retarded. If one of these people suspects serious bodily harm has occurred, he must report the crime within 2 hours of forming the suspicion. When serious bodily harm is not suspected the incident must be reported within 24 hours. Failure to report can result in a civil money penalty (CMP) of up to \$200,000. If the failure to report results in increased harm to the original victim, or harm to another resident, another CMP of up to \$300,000 may be added.

The law also prohibits retaliation against someone who reports suspicion of a crime: a facility may not discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee who reports a suspected crime. If the facility is found to have retaliated against an employee for reporting a crime, another CMP of up to

\$200,000 may be added. While some provisions of the ACA are being implemented over time, these requirements are currently in effect.

Click on the title, above, or go to the URL, below, to download a copy of the federal memo to state survey agencies on this issue (updated August 12, 2011). Future *LTC E-Newsletters* and our quarterly newsletter, the *LTCCC Monitor*, will report on further developments as New York and other states effectuate these requirements.

[https://www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf]

[Nursing Home Bedhold May Be a Thing of the Past in NY State](#)

By January 2012, there will be major changes in the state's bed hold policy for nursing homes affecting both providers and consumers. Nursing Home Medicaid reserved bed reimbursement for all Medicaid recipients over 21 will be eliminated *unless* the nursing home enrolls 50% of their eligible residents in a Medicare Managed Care Program. Click on the title above or go to the URL below to download LTCCC's overview of NY State's bedhold policy.

[<http://www.ltccc.org/documents/ltcccbedholdoverviewaugust2011.pdf>]

[Hurricane Irene: NYC Nursing Home Residents Evacuated, Some Problems Occur](#)

When Hurricane Irene was threatening a full-force hit, New York City ordered the evacuation of nursing homes and senior centers in low-lying areas at the same time that it made plans for the shutdown of the entire transit system. Thousands of residents of 15 nursing homes and adult-care facilities in Brooklyn, Queens and Staten Island, as well as a psychiatric facility, were evacuated. For some, safety brought its own difficulties: sitting in an ambulance waiting for a bed for hours and laying on gurneys from emergency rooms to the street.

[http://www.nytimes.com/2011/08/27/nyregion/evacuation-of-citys-low-lying-areas-begins-ahead-of-hurricane-irene.html?_r=2&scp=10&sq=nursing%20homes&st=cse]

LTCCC To Hold Third
Annual Event Honoring
Karen Schoeneman of
the Centers for
Medicare & Medicaid
Services
October 6, 2011

[Soundview, Managed by Former NYS Senator Espada, Terminated From Medicaid Program](#)

New York State terminated the Comprehensive Community Development Corporation, also known as Soundview, from the Medicaid program effective September 12, 2011. After that date, the Corporation will not be eligible for reimbursement for services rendered to Medicaid recipients. The Corporation failed to have a compliance plan as required by state statute and

regulation. Compliance plans are designed to ensure that Medicaid dollars are properly accounted for and that systems are in place to ensure that all claims for funding are valid. In addition, the Corporation's Medicaid service delivery is managed by two individuals who were excluded from participation in the New York State Medicaid program earlier this year by the Office of the Medicaid Inspector General (OMIG). These individuals are Pedro Espada, Director of Environmental Care, and Pedro Espada, Jr., President and Chief Executive Officer. Mr. Espada is a former New York State Senator.

The Department's actions were based on OMIG's report on significant failures in the Corporation's business operations and lack of controls to ensure compliance with state and federal billing and operational requirements.

[\[http://www.health.state.ny.us/press/releases/2011/2011-08-10_nysdoh_terminates_comp_comm_devel_corp.htm\]](http://www.health.state.ny.us/press/releases/2011/2011-08-10_nysdoh_terminates_comp_comm_devel_corp.htm)

Spotlight on Advocacy: Urge Implementation of LTCCC's Recommendations on Assisted Living

LTCCC's study on assisted living in NY, conducted with funding from the Robert Sterling Clark Foundation and released earlier this year, was based on an analysis of both Department of Health enforcement data from 2002 to 2011 and LTC Ombudsmen complaint data from 2006 to 2011. The study's findings include:

- While the number of citations went down over the years, the three areas most cited by the Department of Health have remained the same for nine years: resident care; medication and environmental issues.
- Medication issues are still rampant.
- Few violations cited led to enforcement actions.
- The mentally ill are still suffering. Even after the investigations of the early 2000's and the succeeding state workgroups, the impacted homes (adult homes with 25 percent or more mentally disabled) still have many problems. Department of Health surveyors are now finding twice as many violations in the impacted homes as the non-impacted homes.

Please [send emails](#) (remember to click on the two action alerts on the right in the Citizens Action Center box.) to the Governor, members of the Legislature and staff of the Department of Health, urging them to make implement the study's recommendations of LTCCC's. For more information on the study, findings and recommendations, [click here](#).

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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