



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

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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THE HOLIDAY SEASON IS HERE!!

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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[U.S. Senate Holds Hearing: “Ensuring Quality and Oversight in Assisted Living”](#)

Following [reports in Florida](#) and across the country of cases of tragic outcomes for residents and their families due to failure of assisted living facilities to provide safe and appropriate care, the U.S. Senate Special Committee on Aging held a hearing on November 2 to address assisted living quality and oversight. The hearing was chaired by Senator Nelson of Florida and included the following panelists: Barbara Edwards, Director, Disabled and Elderly Health Programs Group, Centers for Medicare and Medicaid Services; Martha Roherty, Executive Director, National Association of States United for Aging and Disabilities; Larry Polivka, of the Claude Pepper Foundation; Alfredo Navas, a private citizen whose mother’s tragic death was featured in the NPR/Miami Herald story; Steve Maag, of LeadingAge (one of the provider industry’s national trade groups); and Robert Jenkins, director of the Green House Project (culture change modeled residential care facilities) for NCB Capital Impact.

With the exception of Mr. Navas, who spoke eloquently of his family’s personal experience in the face of his mother’s horrific death at a Florida assisted living, there was no representation of the public or of assisted living consumers at the hearing.

[Senator Kohl](#) (Chair of the Aging Committee) commenced the hearing by noting the growth of assisted living, including the fact that in his state (Wisconsin) the number of people in assisted living has surpassed the number residing in nursing homes. Senator Kohl called for a level of standards and consistency in quality that all providers nationwide should be required to meet. [Senator Nelson](#) echoed this sentiment and noted that more and Medicaid dollars are going to assisted living (up 43% since 2003), a trend that is expected to continue as states look for alternatives to more institutional long term care settings. Senator Nelson wondered why we are still talking about serious assisted living quality and oversight problems ten years after the Aging Committee held hearings on assisted living and set in motion what were supposed to be meaningful stakeholder efforts to address the then burgeoning issues.

The panelists gave somewhat varying responses to what Senator Kohl described as the key issues before them: quality assurance and oversight. Barbara Edwards noted that the role of CMS in assisted living is very limited. Medicaid recipients typically access assisted living services through state Medicaid waivers and currently CMS does not have the ability to take action against individual programs or providers; they can only take action against an individual state in regard to its entire Medicaid assisted living program (this was referred to in the hearing as a “nuclear option”). Though Senators Nelson and Kohl had both mentioned at the onset that Americans should be afforded basic protections in assisted living, the panelists who spoke after Ms. Edwards (with the exception of Mr. Navas, the son of the woman who drowned to death in her assisted living) focused on bolstering existing consumer protection mechanisms such as consumer education, facility disclosure requirements, LTC Ombudsman Programs, and Adult Protection Services. . Stephen Maag (LeadingAge) and Robert Jenkins (Green House Project) contended that problems in assisted living are not pervasive, few providers have issues, and national standards and safeguards are not necessary. [Senator Corker](#), the ranking minority member of the Aging Committee, echoed these arguments, stating that he knows there is a movement to more regulation in the states but he is resistant to it because regulations hold back industry.

[To watch a recording of the hearing click on title above or go to <http://1.usa.gov/sQmWKX>. For the Miami Herald newspaper article on the hearing go to <http://bit.ly/scO8kk>. To contact the Committee senators who spoke at the hearing, click on their underlined names above.]

[Nursing and Residential Care Workers Suffer Highest Occupational Injury Rates](#)

PHI reports:

Workers in nursing and residential care facilities experienced the highest injury rates of any occupational setting in 2010, according to [data](#) (pdf) recently released by the **U.S. Bureau of Labor Statistics** (BLS).

Overall, the country’s private-industry employees suffered nonfatal injuries and illnesses at a rate of 3.5 cases per 100 full-time workers last year, down from 3.6 in 2009.

But private nursing and residential care facilities reported an injury/illness rate of 8.3 per 100 workers — higher than couriers and messengers (7.2), air-transportation employees (8.1), and people involved in performing arts, spectator sports, and related industries (6.7).

Combined, the health care and social assistance industry reported a higher injury/illness rate than any other private sector.

As LTCCC noted in a 2004 [issue brief](#), **Injuries to overworked direct care workers result in significant avoidable costs:**

Certified nurse aides – who provide close to 90% of resident care – suffer a rate of on the job injury that is among the highest of any occupation. According to an article by the Service Employees International Union (SEIU), “Each year, more than 2 million workers suffer repetitive strain and musculoskeletal disorders. Health care employees, especially nursing home workers, suffer more than any other occupational group. Back injuries are the most common type of injury suffered by nursing home workers, and are considered to be among the most serious and costly of workplace injuries.”¹ These injuries result in significant costs, from the resulting high rates of worker compensation to lost productivity. According to SEIU estimates, “the nursing home industry as a whole paid close to \$1 billion in workers’ compensation insurance costs in 1994.”²

[\[http://bit.ly/w1UUVB\]](http://bit.ly/w1UUVB)

Spotlight on Advocacy: Urge NY State to Implement Important Assisted Living Protections & Standards

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.

Many adult homes, including some that have been failing their residents for years, are now applying to be Assisted Living Residences and even for Enhanced Certification (which enables a facility to provide significant care and monitoring for residents with higher level needs and vulnerability). LTCCC has partnered with MFY

¹ *When Pain Makes Politics Personal*, SEIU.

² *Caring till it Hurts: How Nursing Home Work is Becoming the Most Dangerous Job in America*, SEIU (1997).

Legal Services, CIAD and StateWide Senior Action on a state-wide campaign to stop adult homes with a long history of abuse or neglect from expanding into the assisted living and enhance care markets.

You can help by speaking out on these issue now! [Click here](#) to urge NY DOH to deny assisted living certification for homes with a history of violations. [Click here](#) to send a message on the critical need for updates to state assisted living law. [Click here](#) to urge NY DOH to improve its assisted living rules re. important issues like medication assistance for residents and basic training standards for owners, workers and state inspectors. Click on title above to go to LTC's Citizen Action Center and view all of these important action alerts. **A few moments of your time now can make a difference for current and future assisted living residents!**

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.
- [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](#) or PDF.
- Long term care information booklet in [Chinese](#) and [English](#) for Chinese consumers: What You Need to Know about Long Term Care.

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