

LTCCC's Annual Report Card on Government Action

GOVERNOR: A-

The Governor's 2009-2010 budget, proposed at a time of severe fiscal crisis, offered proposals that minimized harm to consumers and responded to many consumer concerns. While, as of this writing, the budget has not been finalized, we were glad to see that among the Governor's proposals was to put money into initiatives that encourage higher quality care and that shift people from nursing homes to less institutional settings. [See future issues of *The Monitor* for more information as program funding is finalized and implemented.] In addition, Governor Paterson has been building on the openness and responsiveness that we had started to see in the Spitzer administration. Agencies appear to be much more responsive to consumer needs and concerns, recognizing that the long term care system's central purpose is to serve the citizens of New York. In addition, it appears that the essential capacity of surveillance and enforcement has not been sacrificed to save money in the short term, since (as of this writing) staff involved in such activities have been exempt from any cuts. On the other hand, we are very concerned about the proposal to radically expand the ALP program which would perpetuate a two-tiered system of assisted living.

Recommendations for 2009: As the state continues to face the financial crisis we hope that the Governor's fiscal planning protects consumers while sustaining crucial oversight and enforcement mechanisms and ensuring provider accountability. Though everyone will be faced with financial challenges, because long term care providers are entrusted with the safety and dignity of people who are particularly vulnerable, it is critical that standards are maintained. Rather than focusing predominantly on cutbacks, we urge the Governor to focus more on restoring fairness to the tax system (by reinstating some of the large tax breaks given to the most affluent citizens in recent years) and closing wasteful corporate loopholes.

DOH: B+

After many years in which the Department turned its back on consumers and their representatives, the Department has become increasingly open to listening to consumers and incorporating consumer concerns in policies and regulations. We were especially

LONG TERM CARE COMMUNITY COALITION		REPORT CARD
NY STATE GOVERNMENT		
Governor		A-
DOH		B+
Attorney General		A
State Senate		F
State Assembly		C-
State Office for the Aging		A

pleased to see that the Department promulgated good and fair assisted living regulations and, in the face of adult home provider lawsuits, is vigorously defending those regulations. Likewise, the approach taken by the Department towards the fiscal crisis has, to a large extent, been protective of consumer needs. We were also pleased that some of our ideas related to using some of

the funds that go to nursing homes to encourage quality found their way into the Governor's budget as a quality initiative proposed by the Department of Health. However, we are concerned that some community organizations and individual consumers continue to report that DOH's consumer complaint line is not adequately responsive when a consumer reports a problem or needs help in a crisis and that the substantiation rate is still too low. We are also concerned that even as consumers continue to complain of poor care and do not see an improvement in quality, the number of actions taken against poorly performing nursing homes (such as denial of payment for new admission, directed plan of correction or independent monitor) and fines against such homes (including both state fines and federal civil money penalties (CMPs)) dropped from 2007 to 2008. For instance, the number of CMPs levied dropped from 51 in 2007 to 43 in 2008 and the dollar amount dropped from approx \$1,484,000 to approx \$912,000.

Recommendations for 2009: DOH is in the early stages of what is expected to be a major overhaul of the nursing home reimbursement system and at the same time is embarking on a major restructuring of the long term care system. While we will be making many specific recommendations on these issues, in general we urge DOH to proceed carefully, given the numerous and often conflicting needs and desires of different consumers and different providers. It is crucial that changes to nursing home reimbursement increase systemic efficiency, which from a consumer perspective means that money should be used to encourage and pay for good care. At the same time, individuals in poorly performing facilities must be protected; their lives are (literally) at stake. Both in the nursing home and out, long term care restructuring must make its first priority the guarantee that everyone who needs long term care receives adequate care in a way that protects their dignity and enables them to live as independently as possible.

ATTORNEY GENERAL: A

In 2008 the Attorney General's Medicaid Fraud Control Unit (MFCU) continued its aggressive enforcement of Medicaid fraud in nursing homes and other long term care settings. We were glad to see that, when fraud was found, the enforcement actions were both thoughtful and meaningful. Not only did the MFCU seek financial remuneration and penalties, it was also responsive to consumer concerns that steps should be taken to ensure that good practices and safeguards were put into place to prevent problems from reoccurring. In addition, the MFCU developed, with consumer input, a good brochure to make sure people understand their rights as consumers of long term care and how the MFCU can help them.

Recommendations for 2009: One: while we appreciate that the Attorney General has held senior management and owners accountable in some of the nursing home cases (in addition to direct care workers) we urge them to intensify its focus on whether there is management or owner culpability in any case that targets direct care workers. As we know, administrators and owners can create an environment in the nursing home that makes it hard for workers to provide proper care or that fosters abuse and neglect. Two: now that assisted living is legally recognized in NY State, it will be important for the Attorney General to step up enforcement activities in this sector. These activities can range from ensuring that assisted living advertisements, brochures and contracts don't contain unlawful claims, false promises or illegal contractual provisions to prosecuting fraud in facilities that take government funds (as the Medicaid Fraud Control Unit is currently doing in nursing homes). Three: we urge the Attorney General to explore more ways that it can be innovative in holding providers accountable for poor care and illegal practices. This could include: exploring the use of RICO statutes and other legal protections not traditionally used in healthcare sector.

STATE SENATE: F

No progress was made on improving conditions for long term care consumers, or bolstering provider accountability, under the Senate leadership of either Bruno or Skelos in 2008. As a whole, the Senate remained hostile to consumer protections.

Recommendations for 2009: Under its new leadership, we hope and expect that the Senate leaders will work with the Assembly and move forward on important protections for long term care consumers,

such as nursing home staffing standards and bolstering of the public health law section 2801-d which provides for private lawsuits in cases of nursing home neglect and abuse but which has often been improperly interpreted by judges in court cases.

STATE ASSEMBLY: C -

With a few exceptions, the Assembly has been moribund this past year when it has come to protecting New York State's long term care consumers and their families. While there were several Assembly representatives who initiated good proposals for consumers, Health Committee Chair Richard Gottfried continued to spearhead the major efforts to protect consumers and their families by introducing important legislation to set minimum staffing standards in nursing homes, developing and introducing legislation to "shore up" loopholes in the public health law which have prevented too many victimized nursing home residents (and their families) from getting adequate legal recourse and introducing a bill which passed into law that mandates food committees in adult homes.

Recommendations for 2009: Although the state's fiscal crisis will make it difficult to promulgate initiatives that cost money, we hope that the Assembly leaders will take advantage of the more consumer friendly political landscape to push legislative initiatives that protect and benefit our long term care consumers. For example, the legislature could pass laws that encourage better use of nursing home "pay for performance" money or that move the state forward in a way that encourages real "affordable assisted living" that people want, not merely perpetuate the old adult home system through further expansion of the ALP (Assisted Living Program).

STATE OFFICE FOR THE AGING: A

Under director Michael Burgess, the State Office for the Aging (SOFA) continued to be at the forefront of the state's efforts to educate and inform seniors about long term care and the choices available to them and to be a strong supporter of consumer protections and choice. LTCCC has long been concerned about the ability of New York's and other states' Long Term Care Ombudsman Programs to stand up for consumer rights. Thus we were very pleased this year that the state ombudsman program, housed in SOFA, was able to join in the amicus brief supporting the assisted living regulations that are being challenged by several providers and industry organizations.