

Annual Report Card on Government Protection in LTC in 2009

About LTCCC's Report Card: Every year the Long Term Care Community Coalition publishes a report card on the previous year's performance of the various government entities charged with protecting New Yorkers who rely on long term care services. The report card is based on a number of factors, including assessments throughout the year of actions taken (or the failure to take action) by the government entities on consumer issues that fall within their purview, results from our meetings and direct communications with government officials, research on specific issues that we have identified as important to consumer care in the course of the year and input from LTCCC's members.

LONG TERM CARE COMMUNITY COALITION	REPORT CARD
NYS Department of Health	B
NYS Governor Paterson	B+
NYS Attorney General Cuomo/MFCU	A
NYS Senate	D+
NYS Assembly	C
NYS Office for the Aging	A-
CMS	B
NYS Medicaid Inspector General	A

NYS Department of Health (DOH): B

Given this year's extraordinary national and state fiscal problems, we recognize that DOH faced considerable challenges and constraints in fulfilling its mission to protect long term care consumers. Though serious nursing home problems persist, in the face of these challenges, we believe that senior DOH long term care staff put in considerable and valuable effort over the year to improve oversight and protect consumers overall.

Since DOH works in a number of areas crucial to long term care consumers, we decided this year to address DOH activities in specific areas:

DOH Area 1: Nursing Homes

Inspection and Enforcement: Surveyor identification of problems remains a major problem. Federal surveyors, conducting "look-behind" surveys in 2009, two to three weeks after state surveyors, found 300 percent more deficiencies than state surveyors and rated these deficiencies as more severe. However, we are pleased that DOH is continuing to identify serious problems in nursing homes; the number of homes identified as putting their residents in immediate jeopardy went up from 41 in 2008 to 43 homes in 2009.

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LTCCC met with DOH a number of times over the last year raising concerns on the need to better train surveyors to identify problems. On the plus side, DOH staff is aware of the problems and seems to want to work on them. The response to data presented by LTCCC was very positive. DOH asked LTCCC to present a training for surveyors that addressed resident perceptions of the survey process and how surveyors can effectively incorporate resident and family input when they are inspecting a facility. We hope to see major progress next year.

Enforcement of rules and regulations governing nursing homes was up slightly in 2009. The number of state and federal fines increased from 101 to 103 with the amounts collected rising from \$1,072,443 to \$1,413,183. However, the number of homes receiving other actions such as state monitoring, directed plans of correction, etc... was down from a high of 78 to 58.

Consumers in the New York City area report that DOH complaint investigators are very unresponsive to consumers and many complaints are unsubstantiated. According to the DOH's own website, during the last three years, 27,337 statewide complaints were made to the DOH. Of these, 11,645 were investigated on site. Only 1510 of these resulted in facility deficiencies. This is a substantiation rate of only 13 percent of all complaints investigated on site. If we include all complaints made, the substantiation rate drops to 6 percent. This is very poor.

Reimbursement: DOH staff has been very supportive of the quality pools concept for nursing homes and very responsive to LTCCC's suggestions about the nursing home reimbursement modifications, agreeing on the need to include staff retention and resident/family satisfaction in the criteria for distributing funds in the quality pools. We hope to see major changes for the better in the nursing home reimbursement system next year.

DOH Area 2: Assisted Living/Adult Homes

We were very disappointed to learn that DOH decided not to appeal the assisted living provider lawsuit that overturned many of the state's protective assisted living regulations, specifically the requirement to have an RN on duty five days a week for monitoring of residents in enhanced and special needs assisted living. [See the article in the spring issue of *The Monitor* (available at www.ltccc.org/newsletter/monitor.shtml) for more information on the lawsuit.]

NY Governor Paterson: B+

The governor listened to the voice of the consumers and signed the Nursing Care Quality Protection Act and in so doing has protected the rights of patients in hospitals, nursing homes and diagnostic and treatment centers. In addition, we were very pleased that the governor sustained the quality pools that are a critical component of the planned nursing home reimbursement changes scheduled to begin implementation in 2010. However, we were disappointed that the governor agreed with DOH to not appeal the assisted living provider lawsuit. [See the article

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in the spring issue of *The Monitor* (available at www.ltccc.org/newsletter/monitor.shtml) for more information on the lawsuit.]

NYS Attorney General Cuomo/MFCU: A

The Medicaid Fraud Control Unit (MFCU) of the NY Attorney General's office continued to work diligently and aggressively to investigate nursing home abuse and neglect. One of the highlights of its work in 2009 was the settlement of a major case against the owners, managers and governing body of Jennifer Matthews Nursing Home in Rochester. In the settlement signed on July 30, 2009, the governing body accepted full responsibility for the breakdown in systems. It has also committed itself to reviewing and revising all systems and policies at the other nursing homes they operate. The settlement also requires that an independent executive be hired to oversee the implementation of the compliance program and to submit periodic reports to MFCU and DOH. This is a major achievement. We are especially pleased to see a major case in which owners and management were held responsible, not just direct care workers.

NYS Senate: D+

The Senate, overall, has once again been mostly moribund. Our hope that new leadership would lead to much needed progressive action were not fulfilled. Few of the bills important to consumers were passed by the Senate. We were pleased, however, that the new Health Chair, Tom Duane, introduced the Nursing Home Diversion Act and are hopeful that under his leadership (and with the strength of the aides and senior staff now working on healthcare in the Senate) health care issues consumers will see more progress in the future.

NYS Assembly: C

With a few more exceptions, the Assembly has also been moribund this past year when it has come to protecting New York State's long term care consumers and their families. The Assembly passed the Quality Improvement Act, the Air Conditioning bill for adult homes and Assemblyman Richard Gottfried introduced a bill to extend protections in the new assisted living law to people in "Assisted Living Program" slots. However, the Assembly failed to act on the Family Decision-Making Act in 2009.

NYS Office for the Aging: A-

We were very pleased with the action taken by the LTC Ombudsman, acting as a Patient Advocate, when Northwoods nursing home in Troy filed for bankruptcy. That office carefully monitored the quality of care and reported directly to the federal Bankruptcy Court to provide assurance that the care of the residents did not suffer. Northwoods experienced a swift and significant decline in many areas of resident care. The Patient Advocate and local ombudsman volunteer identified numerous and serious concerns on a daily basis. The Patient Advocate filed an

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interim report with the Court and the judge called a special meeting of all parties. Based on the Patient Advocate's recommendations in this forum the facility agreed to suspend new admissions until they were back in substantial compliance with all state and federal regulations and the Patient Advocate reported that resident care was improving. Due in large part to the oversight and intervention of Patient Advocate substantial improvements in resident quality of care and quality of life resulted.

The Office for the Aging has increased its focus on the empowerment of seniors, holding a two-day conference titled, Empowering Communities for Successful Aging, at the end of 2008. The conference brought together community leaders, government agencies, housing and senior services providers and other entities serving older adults. However, we are concerned that New York City still does not have a New York Connects program. The Office must decide how to deal with the problem that New York City does not want the contract to provide this service.

CMS: B

The national headquarters has been very responsive to consumer issues around the use of nursing home civil money penalties, agreeing to distribute to all states a memo clarifying how such funds can be used to improve resident care and quality of life. The new memo, which incorporates suggestions by LTCCC and other consumers, was sent in June. In addition, despite pressure from providers, CMS has stood by its Nursing Home Compare system that provides ratings and quality information on every nursing home in the country that participates in Medicaid or Medicare. Though the rating system is not perfect, it is an important and valuable tool for the public to learn about the quality of care provided in nursing homes and make decisions about nursing home placement.

We were pleased that a senior staff member in the regional office presented at an LTCCC Coalition meeting, was responsive to consumer concerns and expressed strong support for enforcing new nursing home quality of life guidelines in the region. However, we are still concerned that the problems with nursing home quality and NY DOH weaknesses (discussed above, under NY DOH) persist in the state despite CMS's responsibility for ensuring that the state conducts effective and comprehensive oversight.

NYS Medicaid Inspector General (OMIG): A

In the few years since it was established, OMIG has come to have an important role in ensuring both quality of care for New York's Medicaid beneficiaries and appropriate use of taxpayer funds. Using cutting edge investigative techniques, including an impressive use of "data mining," OMIG's efforts have resulted in New York leading the country in the percentage of funds recovered from Medicaid expenditures. According to the OMIG website, they have conducted the most audits of any state Medicaid agency.