

M^{LTC}onitor

FALL 2003

THE LONG TERM CARE ADVOCATES' NEWSLETTER

HHS Endangers Residents: Allows Poorly Trained "Feeding Assistants"

The US Department of Health and Human Services (HHS) has implemented regulations (September 25, 2003) which will permit poorly trained and poorly paid workers to feed our vulnerable nursing home residents. This is another example of the administration pandering to the nursing home lobby while ignoring almost uniform national consumer condemnation of this rule. And why not? The industry fought hard for this rule. The industry has much to lose if this rule is not implemented: money. More aides would need to be hired to feed residents. Consumers, on the other hand, only lose comprehensively trained nurse aides and a safe eating experience if the rule is implemented.



Even though HHS maintains that these new regulations will increase quality of care by allowing more workers to help residents, it is clear that these rules will in fact put nursing home residents in jeopardy.

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NHCC Launches New E-mail Newsletter and Websites

NHCC has launched new websites and a new, monthly e-mail newsletter to provide the general public, consumers and policymakers with up-to-date information on issues affecting seniors and other long term care consumers.

Recognizing that there's a great need for information on long term care issues on the Internet, the Coalition has developed two issue specific websites. WWW.NURSINGHOME411.ORG provides current information on nursing home care, regulation and policy issues. WWW.ASSISTED-LIVING411.ORG provides current information on assisted living, including consumer issues and state and national policies.



Just as one can dial '411' to get information by phone, now you can type '411' on your computer and get information on assisted living and nursing home care. The websites will give people easy access to current news and information on these important issues, with links to take action and to learn more about the individual issues.

In addition, NHCC has begun a second newsletter, *THE LONG TERM CARE (LTC) E-NEWSLETTER*, to provide current news and advocacy information directly to subscribers' email accounts. Following are some of the regular features of the LTC E-Newsletter, which had its first issue in August: **News Flash**: news on current issues; **Spotlight on Advocacy**: tools you

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HHS Endangers Residents...

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Vulnerable residents will now be fed by inadequately trained individuals. This may lead to serious complications, even death. These workers may not know what to do if residents choke or have the symptoms of a heart attack or stroke. Although the rules require certain topics to be covered, the amount of training is only 8 hours and is left up to each state to develop. In addition, HHS's regulations do not require training to be conducted by a licensed professional; they do not require any kind of test or demonstration of competence; and they allow these assistants to feed residents in their rooms without direct supervision (nurses are not required to be on the floor or in the unit in which the assistant is working).

In an emergency the feeding assistant must call a supervisor for help on the resident call system. How often have we heard complaints from families and residents of staff failure to answer call bells? In addition, although the rules only permit residents who are identified by the charge nurse and the resident assessment and care plan as not having a medically "complicated feeding problem," to be fed by these assistants, most studies of nursing home care indicate that most nursing homes do not accurately assess resident problems. Nursing home residents will clearly be put in danger.

Moreover, there may be a further reduction of direct care staff because the regulations do not prohibit nursing homes from reducing the number of qualified nursing assistants they employ and replacing them with feeding assistants. HHS is not allocating more funding for these assistants. What do you think most facilities will choose to do? Add to their staff by hiring additional people or reduce their more highly paid and trained staff and substitute them with these new lower cost workers with no benefits?

HHS claims that these assistants are needed to free up nurse aides' time "for more complex tasks, such as bathing, toileting, and dressing changes, as well as urgent medical care." However, we know that there are other ways for homes to make more time for nursing assistants to assist residents at mealtimes without this Draconian change in the regulations. Nursing homes can employ people as feeding assistants who

meet the nurse aide training requirements, competency evaluation, and registry requirements. Some nurse aides are required to do many housekeeping chores, such as making unoccupied beds and cleaning, that could be done by hiring additional housekeeping staff. Eliminating nurse aides' housekeeping responsibilities would free them to do the more complex task of assisting residents at meals.

HHS also claims that feeding assistants are needed because there is a nurse aide "shortage." But, in many places this is not true. In New York City, for example, there is no shortage of nurse aides. The real problem is that nursing homes cannot attract or retain workers because the pay and work environment are so poor. ■



WHAT CAN YOU DO?

Write to the Governor and the Commissioner of Health. Let them know why you are concerned about these rules. Use the arguments above. Let them know that they do not have to implement such a program (HHS stresses that states have the flexibility not to implement a program for approval of feeding assistant training programs). Urge them to protect our citizens and refuse to authorize such workers in the state.

Special Request from NHCC

NHCC is looking for donations of the following items: Conference Table and Chairs, File Cabinets in Good Condition, Desk Chairs, TV and/or VCR. All donations would, of course, be tax deductible.

NHCC Launches New Websites

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can use to easily and effectively make your voice heard; **FYI**: where to go for more information and advocacy contacts; and **NHCC Links**: to go directly to Internet articles and websites of interest.

Subscription to the *LTC E-Newsletter* is free to everyone, and can be obtained by emailing richard.nhcc@verizon.net. In addition, the *E-Newsletter* can be downloaded from the Coalition's main website, www.nhccnys.org. While many of its features are set up for people with Internet access, it is designed so that it can be printed out and useful in hard copy, for people who don't have Internet access. ■



GAO Report: NYS Fails in a Number of Ways

In July, 2003, the Government Accounting Office (GAO) reported on national nursing home quality and state survey activities in “Nursing Home Quality: Prevalence of Serious Problems Remains Unacceptably High, Despite Some Decline.”

The report stated that although there have been fewer serious quality problems reported across the country, the number of nursing homes with serious quality problems remains unacceptably high: one in five nursing homes nationwide still had actual harm or immediate jeopardy deficiencies indicating that they harmed residents or put them into jeopardy.

New York State was one of the few states where there was no or little change in the number of homes it cited for actual harm or immediate jeopardy. This may indicate that poor quality has not declined in New York State, as it seems to have done in other states.

The GAO report also found a large understatement of actual harm deficiencies by state agencies. Federal surveyors found examples of actual harm deficiencies in about one-fifth of homes that states had judged to be deficiency free. Thirty-nine percent of the surveys reviewed by the GAO for this report had documented problems that should have been classified as actual harm such as: serious, avoidable pressure sores; severe weight loss; and multiple falls resulting in broken bones or other injuries. New York State was not part of this sample.

According to the GAO, there are many reasons for this: (1) the poor quality of investigations, (2) inexperienced surveyors, (3) surveyor shortages, and (4) continued predictability of the survey which can allow homes to conceal problems if they want to.

There are indications that some or all of these are problems in New York State. As readers of the *Monitor* know, NHCC and its Resident Complaint subcommittee has long tried to work with the Department of Health to improve the quality of complaint investigations. However, the complaint substantiation rate in New York State remains extremely low. The Department of Health’s complaint bureau has lost public confidence, particularly in the New York City, Long Island and Westchester regions.

New York State reports to the GAO that 40 percent of its surveyors have 2 or less years of experience. This

seems to indicate a high turnover rate. One of the reasons for this may be the lack of competitive salaries New York State can offer to RN surveyors and the fact that New York State requires only 1 to 2 years experience for surveyors. This is a big problem for the nursing home residents in New York State.

According to CMS, the first year for a surveyor is essentially a period of training and low productivity and it takes three years for a surveyor to gain sufficient knowledge, experience and confidence to perform the job well. Thus, the New York State surveyor bureau continues to work on only three cylinders: only 60 percent of its field staff can do the job.

Moreover, while New York State reports that only 4 percent of its positions are vacant, it had to hire outside help to close a huge backlog of complaints that arose because of large vacancies in recent years.

New York State also fails in the area of survey predictability. In order to avoid predictability, the federal Centers for Medicare and Medicaid Services (CMS)

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Enforcement Actions Against Nursing Homes

6/15/03 –9/15/03

DOH Fined ZERO Homes.

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>DATE OF SURVEY</i>	<i>AMOUNT</i>
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No fines were reported to us by the Department of Health during this period. Should nursing home consumers and their families be concerned? Has nursing home care gotten so much better, or has department of health oversight gotten worse?

The State Notified One Nursing Home. They are Subject to a Fine and Must Post a “Notice Of Enforcement” (Look For These Posters)⁺

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>SURVEY DATE(S)</i>
Williamsbridge Manor NH	Bronx	07/31/02

The State Took Other Actions at Twelve Nursing Homes

In addition to the actions listed below, the following nursing homes have fines pending. If the nursing home was found, at the time of the survey, to have given substandard quality of care (SQC) and/or to have put residents in immediate jeopardy (IJ), (the most serious level of deficiencies), to have repeated deficiencies that have caused isolated resident harm (G), or to have received G’s in two consecutive surveys Double (G) it is noted in the third column.

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>IJ, SQC or G</i>	<i>SURVEY DATE</i>	<i>ACTIONS¹</i>
Andrus on Hudson	Hastings on Hudson		05-14-03	DOPNA
Bethel Nursing & Rehab	Ossining	IJ/SQC	05-19-03	DOPNA, POC, State Monitoring
Carthage Area Hosp.	Carthage		07-30-03	DOPNA, POC, In-Service
Cedar Lodge NH	Center Moriches		07-28-03	DOPNA, In-Service
Garden Care Ctr.	Franklin Sq.		06-17-03	DOPNA, In-Service
Horizon Care Ctr.	Arverne	IJ/SQC	05-11-03	DOPNA, State Monitoring
Northeast Center for Special Care	Lake Katrine	IJ/SQC	05-21-03	DOPNA, POC, State Monitoring
Oakwood Care Ctr.	Williamsville	IJ/SQC	08-28-03	DOPNA, POC, In-Service, State Monitoring
Orleans Cty. NH	Albion		06-26-03	DOPNA, POC
Riverview Manor	Owego	IJ/SQC	08-05-03	DOPNA, POC, In-Service
St. Catherine of Sienna	Smithtown	IJ/SQC	05-12-03	DOPNA, POC, In-Service, State Monitoring
Tioga Nursing Home	Waverly		05-22-03	DOPNA, POC, In-Service

¹**Denial of Payments for New Admissions (DoPNA):** Facility will not be paid for any new Medicaid or Medicare residents until correction; **Directed Plan Of Correction (POC):** A plan that is developed by the State or the Federal regional office to require a facility to take action within specified timeframes. In New York State the facility is directed to analyze the reasons for the deficiencies and identify steps to correct the problems and ways to measure whether its efforts are successful; **In-Service Training:** State directs in-service training for staff; the facility needs to go outside for help; **State Monitoring:** State sends in a monitor to oversee correction; **Termination** means the facility can no longer receive reimbursement for Medicaid and Medicare residents.

⁺Nursing homes are also required to post the most recent survey results.

Assisted Living Legislation: NHCC Plans New Strategy for Session

As readers of *The Monitor* know, the leaders in Albany failed again to protect assisted living residents in the last legislative session. People who are thinking about assisted living and those already living in assisted living communities are unprotected from discrimination, unfair treatment and shady or fraudulent providers.

At the end of the last legislative session the Assembly, Senate and Governor Pataki were close to finalizing an agreement that would have resulted in a good law for consumers. It is very important that they pick up where they left off and pass an assisted living law with **strong consumer protections**.

NHCC's Assisted Living Committee, consisting of representatives of numerous statewide organizations as well as private citizens, has been strategizing to find new approaches to resolve the issues that prevented passage of a bill last spring. Because the Senate has been the least committed to passing legislation, the Committee decided to focus this year on the Senate – making sure that senators are educated on the issue and that they hear from New Yorkers that this issue is important to consumers, their families and the general public. Most importantly, it is critical that the senators know of the key issues that assisted living legislation must include to be of real value to consumers. This is particularly important because the bill initially proposed in the Senate last January had very poor consumer protections – it was actually more beneficial for providers! ■



WHAT CAN YOU DO?

Contact your state representatives, particularly your state senator and tell them that they should support assisted living legislation that is protective of consumers. If your senator is one of the following members of the Aging Committee it is particularly important that he or she hears from you: Chairperson: Golden; Members: Maziarz, Kruger, Farley, Lachman, Leibell, Stavisky, Balboni, Oppenheimer, McGee, Diaz, Flanagan and Little.

Fill out and mail the postcard below or visit NHCC's new Citizen Action Center at www.nhccnys.org, where you can enter your zip code to find out the names and contact information of all your state and federal representatives. **You can now fax or email your representatives directly from our website!**

Please stress key issues important in any law: a strong state oversight role, with specified penalties and funding for DOH and Ombudsman staff to insure quality; a Consumer Bill of Rights listing clearly the rights residents have, including the right to form a resident council and protection against discrimination; uniform protective admission and discharge policies; and easy to read and understand consumer information and disclosures for marketing materials, contracts and other communications.

Dear Senator _____:

Use this postcard to send a quick message to your state senator, to let him or her know how you feel about assisted living. It is especially important that people in the Senate hear from their constituents on this issue.

*You can make a difference!!
Make sure they know that
you believe consumers
should be protected!*

GAO Report: NYS Fails...

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directed all states to avoid scheduling a survey for the same month of the year as the previous survey. However, the report demonstrates that over one-third of the nation's surveys remained predictable. New York State beats that with *over one-half* of its surveys being predictable. Such surveys can allow quality of care problems to go undetected because homes may conceal problems.

The GAO report also found problems in state agency enforcement and federal oversight. Across the country, states failed to refer a substantial number of homes that had a pattern of harming residents for immediate sanctions. The report found that state survey agencies did not refer 711 cases in which nursing homes were found to have a pattern of harming residents to CMS for immediate sanction as required. Here too, New York State is one of the worst performers. New York State accounts for 140 or 20 percent of these cases, second only to Texas in not referring cases.

Thus, the GAO report shows that New York State's nursing home residents are in a lot of trouble. New York State has a large percentage of inexperienced surveyors who have to deal with a huge backlog of complaints, most of its surveys are predictable thus allowing providers to hide poor care if they choose to

and many of the homes cited for harming residents are not referred for sanctions.

The report also raises weaknesses in CMS's oversight of state performance. Although CMS instituted an annual state performance review, it does not get the information needed to identify and initiate needed improvements. There were also inconsistencies in how different CMS regions conducted these reviews. The full report can be found on the GAO website: www.gao.gov. ■

Announcements

New guidebook for consumers seeking assisted living residences that will encourage and facilitate resident autonomy, control and decision-making is here! You can download the guidebook for free from our website: www.nhccnys.org or send a self-addressed stamped envelope for a bound copy. The envelope should be 10" x 13" and the postage should be \$1.29. Put in a note asking for this guidebook and mail it to: NHCC Guidebook, 11 John Street, Suite 601, New York, NY 10038. To order multiple copies call 212-385-0355.

Visit us on the Internet for the latest information on issues, Coalition activities and for our new **Citizen Action Center**:

www.nhccnys.org ■ www.nursinghome411.org
www.assisted-living411.org

Use this postcard to send a quick message to your state senator, to let him or her know how you feel about assisted living. It is especially important that people in the Senate hear from their constituents on this issue.



PLACE
STAMP
HERE

Senator _____
New York State Senate
Albany, NY 12247

*You can make a difference!!
Make sure they know that
you believe consumers
should be protected!*

Nursing Home Care: Advocacy Updates

The Coalition is working to improve quality of care in nursing homes on several fronts. We fight for higher staffing levels, improvements to direct care staff training and working conditions and better oversight and enforcement by state and federal regulators.



NHCC's Staffing Committee is made up of organizational members and individuals who join together to fight for better nursing home care and staffing. Below are some of the major issues we are working on:

Mandating Increased Staffing

Currently, New York State law has no minimum requirements for staffing and inadequate staffing is prevalent in nursing homes across the state. Increased nursing home staffing is critically important for resident safety, welfare and dignity. As the new legislative session approaches, NHCC will be fighting for passage of two important laws: a Nursing Home Staff Ratio bill and the Nursing Home Diversion Act.

Unfortunately, because a Staff Ratio bill will mean increased state costs, it is unlikely to become law in the current economic climate. Thus, the Committee has decided to focus on the Nursing Home Diversion Act (NHDA), legislation introduced by Richard Gottfried, Chair of Assembly Health Committee at the end of the last session to stop the flow of new residents into nursing homes with insufficient staff to care for the residents they currently have. Similar to the practice in place for hospital emergency rooms, which divert patients to other hospitals when they reach capacity, and don't have the staffing or resources to care for additional people, NHDA would require nursing homes that do not have enough staff or resources to care for additional people to divert new residents to other homes.


It is vital that the NHDA is reintroduced in the Assembly and introduced in the Senate. Both senators and assembly members must be made aware of this important measure to protect nursing home residents. A principal goal of the Coalition this year is to build support for this legislation among New York's Citizens as well as our leaders in Albany. Another year cannot go by without substantive measures taken to alleviate resident suffering!

Improving Direct Care Staff Training and Working Conditions

NHCC recognizes that insufficient staffing in nursing homes results not only in resident suffering, but also in inferior working conditions for the direct care staff.

As a result of poor working conditions, worker turnover is extremely high in the industry and direct care workers are often under a tremendous amount of stress. NHCC recently released a report on nursing home working conditions that detailed how widespread these problems are. For the nurse aides in the study, the number one issue related to their working condition was insufficient staff. This report received widespread acclaim in the media and by other organizations. In fact, a number of providers have shown interest in the lessons to be learned and asked for copies of the report to give to their boards and owners.

The Coalition plans to use the results of our study and our work with Coalition members to improve conditions for staff by fighting for increased staffing levels (to reduce the pressure of low staffing), working to help providers address some of the issues recognized by the direct care staff interviewed in our study and by working on nurse aide screening and training requirements. ■



WHAT CAN YOU DO?

Contact your representatives in the New York Assembly & Senate and tell them that they must do something to improve conditions in nursing homes. Urge them to support the Nursing Home Staff Ratio Bill (Assembly Bill # A05490), the Nursing Home Diversion Act (Assembly Bill # A08866) and that we need improved training of direct care staff. It is important that your state senator hears that these issues are important to you because last year no bill whatsoever was even introduced in the Senate! And your Assembly representative needs to know that you want these bills to move ahead.

Contact information for your legislators can be easily found on our website's new Citizen Action Center at www.nhccnys.org or via the general contact information on the back of this newsletter.

NEW YORK STATE OFFICIALS:

Governor Pataki
State Capitol
Albany, NY 12224
Phone: 518-474-7516
E-Mail: Go to:
<http://www.state.ny.us/governor>

Commissioner Antonia C. Novello
NY Department of Health
Tower Building
Empire State Plaza
Albany, NY 12237

New York State Assembly:
To write to your representative in the Assembly, address your letters to him or her at NYS Assembly, Albany, NY 12248. The general switchboard for the Assembly is 518-455-4100.

In addition to your personal representative, it is important that the following leaders hear from you:

Action Alert Mailing List

Assemblymember Sheldon Silver
Speaker
speaker@assembly.state.ny.us

Assemblymember Richard N. Gottfried
Chair, Committee on Health
gottfr@assembly.state.ny.us

Assemblymember Steve Englebright
Chair, Committee on Aging
engles@assembly.state.ny.us

New York State Senate:
To write to your Senator, address your letters to him or her at NYS Senate, Albany, NY 12247. The general switchboard for the Senate is 518-455-2800.

In addition to your personal senator, it is important that the following leaders hear from you:

Senator Joseph Bruno
Majority Leader
bruno@senate.state.ny.us

Senator Martin Golden
Chair, Committee on Aging
golden@senate.state.ny.us

Senator Kemp Hannon
Chair, Committee on Health
hannon@senate.state.ny.us

To obtain the names of your personal state government representatives, go to The Citizen Action Center on our website:
www.nhccnys.org

FEDERAL OFFICIALS:

President Bush
The White House
Washington, DC 20500
Phone: 202-456-1111

Fax: 202-456-2461
E-Mail:
president@whitehouse.gov

Senator Hillary Clinton
United States Senate
476 Russell Senate Office Building
Washington, DC 20510
Phone: 202-224-4451
Fax: 202-228-0282
E-Mail: Go to:
<http://clinton.senate.gov/offices.html>

Senator Charles Schumer
313 Hart Senate Building
Washington, DC 20510
Phone: 202-224-6542
Fax: 202-228-3027
E-Mail: Go to
<http://schumer.senate.gov>



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