

# LTC CC

LONG TERM CARE COMMUNITY COALITION  
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Working to improve long term care through research, education & advocacy

## LONG TERM CARE (LTC) E- NEWSLETTER

Welcome to the [LTC E-NEWSLETTER](#), a monthly electronic newsletter of the [Long Term Care Community Coalition](#).

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### [SUPREME COURT NARROWS AGE-DISCRIMINATION PROTECTION](#)

The rights of older adults to be protected against age discrimination in this country were significantly diminished by the Supreme Court on April 1, 2009, when a slim majority of the court ruled that a group of older New York City building employees who were removed from their positions and placed in less desirable jobs could not avail themselves of their rights under the federal Age Discrimination in Employment Act because their union contract calls for arbitration of age-discrimination claims.

The [Age Discrimination in Employment Act](#), a federal law passed in 1967, gives older Americans the right to sue for discrimination in the workplace. The law's statement of findings and purpose lays out some important reasons for the law. It includes the following:

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave.

*The New York Times* editorial on April 3, titled "[A Blow to Workers' Rights](#)," noted that: "Laws like the Age Discrimination in Employment Act give individuals a right to sue for discrimination — no matter what deal their union decides to strike for the workers as a group.... The fight over who will hear these claims matters because workers who have been discriminated against are more likely to get a fair hearing in federal court than in arbitration. That is why employers are eager to arbitrate — and it may be why the court's most conservative justices voted in favor of compulsory arbitration."

N.B. The union that negotiated and signed this contract, which resulted in older workers losing their federal rights, is SEIU (the Service Employees International Union), is the major union representing nursing home workers in NY State.

[<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=07-581>]

### **[BOSTON COLLEGE LAUNCHES NATIONAL CENTER TO EXPAND & IMPROVE PERSON-DIRECTED LONG TERM CARE](#)**

The Boston College Graduate School of Social Work has launched a technical assistance center to help states implement participant-directed long-term care programs. According to the school's press release: "The National Resource Center for Participant-Directed Services is the

only national center of its kind and is available to assist states and other entities that want to offer, or already offer, participant-directed services to people with disabilities. Participant-directed (also called consumer-directed and self-directed) long-term care programs help people of all ages across all types of disabilities maintain their independence and determine for themselves what mix of personal care services and supports work best for them. ‘The mission of the National Resource Center is to give every person eligible to receive publicly funded long-term care services and supports the option to manage those services for themselves at home,’ said Kevin J. Mahoney, PhD... [the center’s director]”. [www.participantdirection.org]

### **NEW REPORT: DO NONINSTITUTIONAL LONG-TERM CARE SERVICES REDUCE MEDICAID SPENDING?**

The January/February issue of *Health Affairs* reports on a study that has assessed the impact of increased non-institutional care services on Medicaid spending. It is well-known that consumers desire to obtain long term care services outside of institutional settings wherever possible. The Supreme Court’s *Olmstead* decision, held that people have the right to receive care in the least restrictive setting for them as individuals. As a result, the availability of home and community based services (HCBS) has been increasing in recent years.

According to the report’s abstract, “Medicaid spending on home and community-based services (HCBS) has grown dramatically in recent years, but little is known about what effect these alternatives to institutional services have on overall long-term care costs. An analysis of state spending data from 1995 to 2005 shows that for two distinct population groups receiving long-term care services, spending growth was greater for states offering limited noninstitutional services than for states with large, well-established noninstitutional programs. Expansion of HCBS appears to entail a short-term increase in spending, followed by a reduction in institutional spending and long-term cost savings.” [www.allhealth.org]

### **FEDERAL BUDGET AMENDMENT WOULD END BONUSES FOR NURSING HOMES WITH VIOLATIONS**

McKnight’s *Long Term Care News* reports that “the [U.S.] Senate approved an amendment to the budget bill that would eliminate bonuses paid to nursing homes and other government contractors that ‘fail to meet basic performance requirements.’” The amendment targets

nursing homes as well as other industries. McKnight's quotes Senator Coburn of Oklahoma, who introduced the amendment, saying that "The public had every right to be outraged when AIG received \$165 million in bonuses from public funds, yet few taxpayers realize the government has spent billions on improper bonuses for the defense industry, non-performing contractors and incompetent executives ...." [www.mcknights.com]. The Centers for Medicare & Medicaid Services pays more than \$312 million a year in quality-of-care bonuses to nursing homes that provide below average care and have past violations of health and safety regulations, according to Coburn's Web site.

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***SPOTLIGHT ON ADVOCACY: Speak Out For Sensible Nursing Home Reimbursement***

New York's nursing home residents have more bedsores than the national average yet receive less care to prevent them. Likewise, more of our residents are incontinent, yet they receive less treatment for it. Meanwhile, according to the governor's office, "New York spends \$7 billion annually on nursing homes, about the same as California and Pennsylvania combined." One has to ask: what are we paying for?

LTCCC's new report, "Modifying the Case-Mix Medicaid Nursing System to Encourage Quality, Access, and Efficiency" seeks to address these issues. The report is the outcome of a year-long study, supported by The New York Community Trust, that is the first major effort to examine, from a consumer perspective, whether the different ways that nursing homes receive funding actually result in good care for vulnerable residents and are a smart use of taxpayer dollars. The report recommends major changes in the New York State nursing home Medicaid reimbursement system to both save money and focus on quality. Huge amounts of Medicaid funds go into the nursing home industry annually, yet little of this money is tailored to encourage quality care. [The report is available at [www.nursinghome411.org](http://www.nursinghome411.org).]

**PLEASE SPEAK OUT NOW.** The nursing home provider industry is putting tremendous pressure on the governor, NY Senate and Assembly to maintain the status quo. It is crucial that your senator, assembly representative and the governor hear from NY citizens that we cannot continue to pay nursing homes without any regard for the outcomes they achieve. Urge your state leaders to read the report and implement its recommendations. You can send a message

to them by going to LTCCC's Citizen Action Center (go to [www.ltccc.org](http://www.ltccc.org) and click on the Citizen Action Center on the right hand side).

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## **WE'RE ON THE WEB!**

[www.ltccc.org](http://www.ltccc.org): Our main website, with access to all of our issues, policy briefs and research.

[www.assisted-living411.org](http://www.assisted-living411.org): For information on assisted living, including consumer issues and policies.

[www.nursinghome411.org](http://www.nursinghome411.org): For information on developments in nursing home care, regulation and policy issues.

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## **LTCCC LINKS OF INTEREST:**

[View the latest enforcement actions against nursing homes in New York State](#)

[Read the latest edition of LTCCC's Newsletter](#)

**[Click Here To Make A Donation On-Line](#) or send a tax-deductible donation to LTCCC, 242 West 30<sup>TH</sup> Street, Suite 306, NY, NY 10001**

*If the above links do not work (or if you are reading a printout of this newsletter) you can find these documents on our homepage, [www.ltccc.org](http://www.ltccc.org).*

[SIGN-UP FOR THE LTC E-NEWSLETTER \(OR UNSUBSCRIBE\)](#)!

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***LTCCC is a coalition of over two dozen organizations that works to protect the rights and welfare of long term care consumers in all settings, including nursing homes, assisted living facilities and the community, through policy research and systemic advocacy. For more information on these and other long term care issues, visit our website: [www.ltccc.org](http://www.ltccc.org).***