



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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[FEDERAL COURT RULES CONTINUING CARE RETIREMENT COMMUNITY CAN FORCE RESIDENT TO MOVE TO ASSISTED LIVING](#)

A federal court in California has ruled that a continuing care retirement community (CCRC) can force a resident to move out of her private apartment in the CCRC and into a semi-private room in the assisted living portion of the community. In this case, the CCRC offered three levels of care – independent living, assisted living, and nursing facility care. The independent living section where the woman lived was licensed as an assisted living.

Mrs. Herriot and her husband had paid a substantial entry fee when first admitted to the community. Approximately 15 years later, she was hospitalized. When she returned to the community, she was told that she would have to move because she required around-the-clock care which was not allowed under the state's assisted living licensing rules. The resident's physician, however, stated that it was in the resident's best interest to stay in her apartment, which she did - receiving private-duty care as the dispute with the CCRC continued.

A federal district court found that the resident's requested accommodation – staying in the apartment with private-duty assistance – was not reasonable. The resident's unit was licensed for assisted living services, and licensing rules excluded residents who needed around-the-clock nursing care. The court ruled that the CCRC has a duty to provide the woman with medical care based on her level of need, and that it cannot delegate that duty to private help hired by Ms. Herriot.

IMPORTANT NOTE: This ruling is likely to be appealed. However, whatever the final outcome, it serves as an important reminder to consumers and their families that it is crucial to be fully aware of both their rights and obligations whenever entering into a contract for residential care. *Herriot v. House* (U.S. Distr. Ct., N.D. Cal., No. C 06-6323 JF (RS), Jan. 29, 2009).

[NY ATTORNEY GENERAL BREAKS UP SCHEME TO DISTRIBUTE FALSIFIED HOME HEALTH AIDE CERTIFICATIONS TO INDIVIDUALS ACROSS NY STATE](#)

As a result of investigations by the NY State Attorney General's Medicaid Fraud Control Unit, the owner/operator and an employee of the Global Health Care Training Center were arrested in late February on charges alleging that their company perpetrated a scheme to distribute falsified home health aide certifications to individuals across New York State. According to the press release issued by the Attorney General, "They were charged with Grand Larceny in the First Degree, a class B felony, for their involvement in providing bogus certifications, which are estimated to have cost Medicaid, in total, over \$1 million. The arrests are part of Attorney General Cuomo's "Operation Home Alone" – his Medicaid Fraud Control Unit's (MFCU) continuing investigation into allegations of fraud and abuse in the lightly regulated, fast-growing home health care industry."

[http://www.oag.state.ny.us/media_center/2009/feb/feb26a_09.html]

[INVESTIGATION FINDS FORMER NY DEPARTMENT OF HEALTH COMMISSIONER NOVELLO "HABITUALLY ABUSED THE SERVICES OF THREE DOH EMPLOYEES"](#)

Chauffeured shopping sprees, being sent to pick up dry cleaning, water her house plants and bring her friends and family to and from the airport.... These are just a few of the many abuses of power that NYS Department of Health (DOH) employees reported to the Inspector General in his investigation of complaints of Antonio Novello's abuse of power while she served as the DOH Commissioner under Governor Pataki from 1999 - 2006. According to the official report, "The Inspector General found that the drivers were required to work over 2,500 hours of overtime directly related to Novello's personal activities, for which the state paid approximately \$48,000 in supplemental compensation to the three DOH employees. Furthermore, Novello grossly underestimated the taxable benefit she obtained from her personal use of the drivers and the state vehicle on her annual filing with the Department of Health. Novello's under reporting was then reflected in the federal W-2 form prepared for her by the state."

[www.ig.state.ny.us]

CONSUMER ALERT: RISK OF ZINC POISONING FROM DENTURE CREAM USE

If you're one of the 45 million denture wearers in the U.S. and you have recently suffered paralysis, tingling in your hands and feet, muscle weakness or loss of balance, your symptoms could be a sign of nerve damage caused by the zinc that is used in popular denture creams such as Fixodent and Super Poli-Grip.

The danger of zinc in denture creams came to light in a 2008 study published in the medical journal *Neurology*. The study analyzed the zinc content of Fixodent and Super Poli-Grip, the denture creams used by four patients with unusual neurological symptoms. The startling conclusion of that study: those patients had been exposed to excessive and dangerous amounts of zinc, causing serious nervous system disorders. Each of those patients had been using two or more tubes of denture adhesive per week for several years. Normally, a tube of denture adhesive should last from three to 10 weeks, but these patients used adhesive creams in amounts well above the recommended amount -- a common practice when dentures are not a snug fit. The zinc in the denture adhesives was absorbed through the gums or swallowed each time the patients ate or drank something, exposing them to an estimated 330 milligrams or more of zinc daily -- far in excess of the recommended daily allowance of 8 milligrams for women and 11 milligrams for men. [www.fightingforyou.com/SiteMap/ShowTopic,2,152.html]

SPOTLIGHT ON ADVOCACY: SPEAK OUT IN SUPPORT OF GOOD, AFFORDABLE ASSISTED LIVING

New York has an assisted living law that went into effect in 2004 and provides for important consumer protections regarding admission and retention of residents; residency agreements; types of services provided and requirements for professional nurse staffing. Now the Governor is proposing downsizing 6000 nursing home beds and expanding the Assisted Living Program (ALP) by 6000 slots, which would enable 6000 people on Medicaid with lower care needs to avoid nursing home placement. LTCCC strongly supports people having choice and control over where they receive care. However, the ALP is not subject to the protections of the 2004 assisted living law. Therefore, many of the ALP slots are now in adult home facilities that are very institutional. Some of them provide inhuman living conditions.

PLEASE SPEAK OUT NOW. Tell your state leaders that NY should not put any more money into an assisted living program that does not meet the standards set forth in the 2004 assisted living law! Go to <http://capwiz.com/nhccnys/state/main/?state=NY> and send an email, fax or letter now.

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 Newsletter](#)

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

If the above links do not work (or if you are reading a print out of this newsletter) you can find these documents on our homepage, 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 this and other long term care issues, visit our website: www.ltccc.org.