



for your INFORMATION

Friends Of Residents In Long Term Care Newsletter

Fall 2003

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Issue Four

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June Brotherton Begins as Executive Director

Effective January 1, 2004, June Brotherton will begin her service as the Executive Director of Friends of Residents in Long Term Care. June is currently the Associate Director for Administration and Advancement for the NCSU Libraries and will be retiring from that position at the end of December. Prior to her work with the library, June was the Associate Vice Chancellor for Extension and Assistant to the Chancellor for Government Relations. June has both a Bachelor of Science and a Master of Public Administration from North Carolina State University. She brings a wealth of



June Brotherton

administrative, policy, and legislative experience to the position of Executive Director. She is no stranger in the halls of the General Assembly. The board offered June this position earlier this summer, but she has had to wait until January due to the terms of her state retirement. June has been working in a part-time, volunteer capacity over the past several months and has become knowledgeable about the mission and initiatives of Friends of Residents. She looks forward to "hitting the ground running" in 2004. We welcome June and look forward to her leadership.

Lend Your Voice for Adult Care Home Residents' Rights

By Shannon Slater, Regional Ombudsman, Land of Sky Regional Council

Let's face it; most of us want the best for ourselves and for our loved ones. When Mom and Dad can no longer look after themselves, we want to be assured that they will be cared for well. Most of us, however, also work and raise families. Often it becomes physically impossible and emotionally unhealthy to continue trying to look after our loved ones ourselves. Many of us may experience the guilt and loss that come with placing a family member in a residential facility. Placing loved ones in residential facilities is becoming more and more a reality in our frenzied society. Even with compassionate

and caring staff present, we are often wary of facilities. We worry about our family members in institutionalized homes - will they eat OK? Will they receive all the medicines and treatments they need? Will they be able to speak up for themselves? Bottom line, will they be all right? As families, friends and caregivers of facility residents, we each have the opportunity and indeed, the obligation, to help speak up for our loved ones living in facilities. This is especially important not only for nursing home residents, but for residents of adult

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The mission of Friends of Residents in Long Term Care is to promote the highest quality of life for those who cannot live independently, and for those who care for them.

Executive Director's Message

By June Brotherton

I am so delighted to have the opportunity to work with Friends of Residents in Long Term Care as your Executive Director. When I made my decision to retire from state government service, I decided that I wanted to start my “second” career working on critical issues impacting senior citizens, and I can think of no more important issue than quality of long term care.

In the crush of policy and budget issues that face the state’s key decision-makers, it is critical that residents of long term care and their families have a voice at the table to ensure that their quality of care issues and needs are addressed. There are many voices in the public policy process, many of whom have more resources with which to ensure their arguments are heard. However, it is the role of Friends to persistently provide factual information and residents’ perspectives that will give long term care residents and their families have an accurate and compelling voice – with legislators, long term care providers, state agencies and any other entity impacting their quality of life in a long term care setting.

To provide that voice, our agenda for the coming year will be an important one – national criminal background checks for direct care workers, transfer/discharge of long term care residents, and salary/retention of direct care workers. The current medical malpractice bill – passed by the state Senate and to be considered by the House in May – also may have serious implications for our ability to access public records, as is our right as citizens, to evaluate critical issues related to quality of care in long term care facilities statewide. Our strong Public Policy Committee and I will be working hard on these issues and will need your help.

I want to thank you for your committed support of Friends of Residents. However, if our organization is to rise to meet the challenges facing those citizens who reside in long term care and their families, Friends will need the continued support of you, our current members. We also need your assistance in “growing” our membership and expanding our education and outreach programs statewide. By doing so, the issues we care about will not only have greater voice, but greater resonance with key decision-makers.

Although I do not assume officially my new position with Friends until January 2, I have been volunteering time to attend various meetings related to FOR’s issues and goals. I attended the National Citizens’ Coalition on Nursing Home Reform (NCCNHR) meeting in Washington, and have already met with the Regional Ombudsmen Association, key AARP staff, and the State Ombudsman

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Words from the Board Chair

By Bill Lamb

It seems like the theme for several of my columns over the past two years has been one of transitions. This one will be no exception. Friends of Residents in Long Term Care continues to undergo transitions. My term as board chair ends at the end of this month, and Roger Manus will assume the leadership responsibilities. Our new executive director, June Brotherton, will also begin her employment with us. Able hands will lead Friends of Residents in Long Term Care. This time is also the time when we mount our annual membership and development campaign. If you haven’t done so already, please take the time to renew your membership and consider making a contribution beyond the basic membership rate. I read this week that charitable contributions remain down. We can’t afford to have that happen to us. Our work is too important. A new membership brochure is available from the office, or you can make a contribution through FOR’s website at www.forltc.org. In addition to your own membership renewal, try to recruit new members. I am still surprised at the many people I run into who have a serious interest in long term care, but aren’t members of Friends. I definitely ask them to join; and I am asking for your help in this effort as well. A direct appeal, person to person works wonders. I want to take this time to give my thanks to all of our members who have worked so hard over the past years to make Friends of Residents the kind of organization we are today. I still have warm feelings from the 15 year celebration event held last spring. Many individuals have given their time, money and talents to improve the care provided to residents in our long term care facilities. I remain grateful for both the effort and the outcome. I remain committed to our mission and purpose and look forward to working with the new board and staff. They have my very best wishes.

For Your Information

the Newsletter of Friends of Residents in Long Term Care

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Vice Chair Roger Manus
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Treasurer David Moser

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Cary, NC

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(continued from "Lend Your Voice" on page 1)

care homes as well. Adult care homes, commonly referred to as "rest homes" or "assisted living facilities," provide 24 hours of personal care and supervision for adults of all ages without offering skilled nursing services. Their smaller version, the family care homes, provide care for up to six people in a family-like setting. A family care home often looks like any other residential home and readily blends into neighborhoods and communities.

Why is this important? Here in Buncombe we have more than 90 adult care homes and family care homes operating across the county, more than any other county in the entire state of North Carolina. When all the beds in these homes are full, we have more than 1,300 adult care home residents living in Buncombe County. Many of these residents are affected by mental and physical health difficulties but don't yet need nursing homes. Most are frail, low-income individuals without large support networks. The residents are often unable or afraid to speak up for themselves.

How can you help the residents? It is essential that residents have other voices to help speak for them.

All of the adult care home rules in North Carolina are currently open for review by the North Carolina Division of Facility Services' Rules Review Committee in Raleigh. You, as friends, family, staff, caregivers and advocates of adult care home residents, now have a unique opportunity to support residents' rights. You can do this by speaking up to ensure that protections of adult care home residents are strengthened and not reduced. We consumers depend daily on the countless facility staff and caregivers who give their precious time to look after the residents. If consumers and caregivers want to change the adult care home regulatory system for the better, our input is demanded.

Please consider lending your voice for adult care home residents' rights. All too often, we find that it is much easier to go about the regular routine of our daily lives than it is to speak up. Speaking up involves energy, dedication, and time. If, however, we are to properly acknowledge the residents' needs and acknowledge all of the kind souls who care for residents day in and day out, we MUST let our input be heard.

Consider attending public hearings or writing letters of public comment. To find out when adult care home rules public hearings are scheduled, visit the NC Register online free at www.ncoah.com (Click "Rules Division", then "NC Register"), subscribe to the twice-monthly NC Register by calling (919) 855-3751, or request to be added to the mailing list maintained by the rule-making body. Also consult the NC Register to find out which rules are temporary and are open for discussion before becoming part of the State Administrative Code.

Perhaps it is not feasible for you to attend a public hearing. You can instead write a letter and request that it be read into the minutes of a public hearing. To submit public comments, write a letter to Jim Upchurch, Chief of North Carolina's Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC, 27699-2708. Letters can also be written to the Medical Care Commission, Chairperson Lucy Bode, 2701 Mail Service Center, Raleigh, NC, 27699-2701. Several officials in Raleigh have told me that they listen very carefully to letters from the public, especially when they receive a lot of letters on one particular issue. When asked what "a lot" of letters was, the response was 10. Not 100, not 50, but only 10. Each and every one of us truly can make a difference in the life of an adult care home resident. Why not start now?

Shannon Slater is the lead regional ombudsman for the Area Agency on Aging, Land-of-Sky Regional Council. She lives in Asheville. This article originally appeared in the Oct. 4, 2003 Asheville Citizen-Times.

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to learn more about the complexities of the state's long term care system. Once I join Friends full-time, many of you will be hearing from me as I want to hear members' ideas and observations about the organization, and how we can enhance our current educational programs and services, membership and public presence.

My e-mail address is jbrotherton@forltc.org, so please feel free to e-mail or call me with questions, ideas, or issues. I look forward to meeting and working with you. Thank you for supporting Friends of Residents in Long Term Care.



Family Council Corner

As one component of the Family Council Project, Friends of Residents has acquired a videotape, *Strength in Numbers: The Importance of Nursing Home Family Councils*, produced by the National Citizens Coalition for Nursing Home Reform. This is a useful resource for new family councils or family councils that need to revitalize. The video provides background, tips for organizing, and process suggestions related to family councils. Contact the Friends of Residents office if you would like to borrow the video or would like to have a representative from our speaker's bureau make a presentation for your Family Council.

Are you a member of a Family Council? We'd like to know. Please email the office at friends@forltc.org

Forensics Forum

By Roger Manus, Attorney-at-Law, Raleigh, N.C.

- Q: My mother developed terrible pressure sores due to the inadequate care provided by her long term care facility. The sores were so bad that she had to have both feet amputated. We would like to file a lawsuit against the facility, but the facility's admission contract says that all disputes are subject to arbitration. As I understand it, that means that she could not go to court and have her case decided by a jury but would instead have to help pay for a private arbitrator who would decide the case. In other words, she loses her constitutional right to a jury. Can they get away with that?
- A: Maybe not.

It is true that federal law, with certain exceptions, requires enforcement of arbitration provisions in contracts affecting interstate commerce. I would argue though that your mother would be protected from an arbitration requirement if she lives in a nursing home where her facility expenses were paid by either Medicare or Medicaid. Both federal programs require that the facility accept reimbursement as payment in full for nursing home care. Thus, for a nursing home to require as a condition of admission that a resident give up her right to a jury trial and instead incur the cost of private arbitration would be to require the resident to give the facility something of value beyond access to federal reimbursement. This would violate Medicare/Medicaid law and be unenforceable. Although the state agency in Arkansas which regulates nursing homes has officially accepted this argument for Medicaid, I am not aware of any courts which have accepted or rejected this argument.

If your mother's long term care is not funded by Medicare or Medicaid in a nursing home, she might still have good legal arguments for avoiding the arbitration provision. Was the contract presented on a "take-it-or-leave-it" basis when your mother had to be placed in the nursing home immediately such that she had no real bargaining power? If so, and you could show that the terms of the contract were beyond the expectations of an ordinary person, oppressive or unconscionable, the arbitration provision might not be enforceable. A "no" answer to any of the following questions also would undermine the enforceability of the arbitration requirement:

- Did your mother or someone with proper legal authority to act on her behalf sign the agreement requiring arbitration?
- If so, was the person who signed competent to sign a contract?
- Did a representative of the facility sign the contract?
- If the arbitration rules and procedures have the effect of depriving your mother of any meaningful remedy or redress, or significantly interfere with her legal rights, was your mother given a copy of the arbitration rules and procedures when she agreed to arbitration?

The courts and jury system might still be available to your mother. If an attorney thinks that your mother's claim for money damages has merit, the question of arbitration is one that he or she would address in the course of representing your mother on a contingent basis. In other words, the arbitration issue would not increase your attorney fees.

2004 Executive Officers

At the October meeting of the Board of Directors, the following board members were elected to serve on the Executive Council for 2004. Please join the Board of Directors in thanking them for their leadership of Friends of Residents. Officers will begin their terms January 1, 2004.

Board Chairman:	Roger Manus
Vice Chair:	Sherry Harris
Secretary:	Beverly Wheeler
Treasurer:	David Moser

Interested in Volunteering with Friends of Residents?

We are looking for volunteers for several committees:

- Education Outreach Committee
- Development/ Fundraising Committee
- Event Planning Committees.

If you are interested, please contact the office. We would love to have your help.

Gifts of Stock

Some members make contributions of stock to Friends of Residents. For your convenience we have a gift account with Edward Jones Investments. Call Jon Strickland, Edward Jones Investment Representative at 919-783-7786.

JULY 2003 PENALTY REVIEW COMMITTEE ACTIONS

<u>Facility/County</u>	<u>DFS Proposed</u>	<u>PRC Approved</u>	<u>Explanation</u>
Yelton's Health Care Center Cleveland County	\$10,000	\$10,000	Facility failed to provide appropriate supervision and neglected a resident during bathing. Facility staff left a resident, who required assistance, unattended for an undetermined length of time, resulting in the resident sustaining third degree burns over a large percentage of the body. There was a delay of approximately 36 minutes before calling 911 once the staff became aware of the resident's distress. The resident later died of scalding injuries.
Ameer Commons Proposal #1 Mecklenburg County	\$3,200	\$3,200	Facility failed to correct a violation in the area of Health Care by the specified date. The facility failed to notify the resident's appropriate health care provider and make arrangements to assure residents receive care as needed for best possible health.
Ameer Commons Proposal #2 Mecklenburg County	\$2,150	\$2,150	Facility failed to correct a violation in the area of Management of Medications by the specified date. Facility failed to assure that medications were administered according to physician's orders.
Autumn Green Adult Care Home Wake County	\$5,000	\$5,000	Facility failed to assure that all arrangements were made to enable Resident to remain in the best possible health condition. Resident's physician documented significant weight loss with order for nutritional supplements and a return visit on a specified date. Facility failed to administer nutritional supplements as ordered. A return visit to the physician was never made. Resident was transported to local hospital with the complaint that resident had not eaten or walked for four days. Additionally, facility had no heat in the residents' area with the thermostat set on 54 degrees when the outside temperature was 25 degrees. Resident died at the hospital due to complications from pneumonia/ hypothermia.
Cleveland Health Care - Proposal #1 Cleveland County	\$2,400	\$2,400	Facility failed to correct penalty violation in the area of Medication Management/ Controlled Substances. Facility failed to assure a readily retrievable record of controlled substances by documenting receipt, administration, and disposition of controlled substances.
Cleveland Health Care - Proposal #2 Cleveland County	\$1,600	\$1,600	Facility failed to correct penalty violation for Qualifications for Medication Staff. Facility failed to assure that staff who are administering medications are qualified in accordance with rules.
Country Time Village #10 Buncombe County	\$1,550	\$1,550	Facility failed to correct a penalty violation by the specified time period. Facility failed to arrange for a physician follow-up appointment as instructed by the physician.
Nor Len of Garner Wake County	\$5,200	\$5,200	Facility failed to provide appropriate care and services, including the provision of modified diets as ordered by physicians. Facility failed to make necessary corrections as directed by the specified date. Facility continued in the violation for an extended time before taking appropriate actions. The facility's continued failure to provide therapeutic diets had a direct relationship to the health and safety of 45 of the 67 residents.
The Meadows of Oak Grove Durham County	\$2,000	\$2,000	Facility failed to provide appropriate care and services to the residents of their licensed Special Care Unit for Alzheimer's and Related Disorders. The facility failed to assure that required policies were implemented, that admission criteria were met, that special care unit staff were adequately trained or that the staff were in adequate numbers to provide necessary care.
Windwood Rest Home Buncombe County	\$3,000	\$3,000	Facility failed to assure that staff was present in the home to provide appropriate supervision and services, receive morning medications, and receive breakfast. Lack of staff supervision, meal service and medication as ordered placed the residents at risk for serious physical harm.

AUGUST 2003 PENALTY REVIEW COMMITTEE ACTIONS

<u>Facility/County</u>	<u>DFS Proposed</u>	<u>PRC Approved</u>	<u>Explanation</u>
Alleghany Assisted Living Proposal #1 Alleghany County	\$1,000	\$1,000	Facility failed to contact the physician in response to a medication review by the pharmacist. The mental health agency was not notified that the resident refused medications for an extended period. Once the mental health agency was notified, the resident was involuntarily admitted to the mental health hospital.
Alleghany Assisted Living Proposal #2 Alleghany County	\$6,000	\$6,000	Facility failed to arrange for medical care in a timely manner after a resident complained of chest pains and appeared to be in distress. Only after the resident was found to be unresponsive did the staff call 911. The resident was pronounced dead on arrival at the hospital. Facility's license was revoked- no longer in operation.
Boger City Rest Home Lincoln County	\$8,000	\$8,000	Facility failed to respond in accordance with adult care home rules and their own emergency policy after a resident wandered from the facility in sub-freezing weather. The facility failed to contact EMS in a timely manner after finding the resident lying on the ground, bleeding from the head. Resident died of hypothermia.
Carrboro Senior Living Orange County	\$4,350	\$1,740	Facility failed to provide provision of therapeutic diets as ordered by physicians, directly affecting residents' health and safety. Facility failed to make required corrections by specified date. During a follow-up survey, 5 of 10 sampled residents were not provided their diets as ordered by physician. Residents included ones with Type II Diabetes, chronic and acute renal insufficiency, and resident requiring mechanically soft prepared foods.
Deal Care Inn, Inc. Rowan County	\$700	\$700	Facility failed to assure that diet orders were clarified with physicians, that menus were planned and reviewed by registered dietician as needed, and served accordingly.
Forest Trail Retirement Center Sampson County	\$4,600	\$4,600	Facility failed to administer medications as ordered by prescribing practitioner. Some residents did not receive medications as ordered due to those medications not being available in the facility. The facility failed to make necessary corrections by date specified.
Heartfields at Cary Wake County	\$2,250	\$1,125	Facility failed to maintain the hot water temperatures at all fixtures at appropriate levels. Water temperatures were found to be as high as 154 degrees. While the facility had made efforts to meet the directed plan, the temperatures remained higher than 120 degrees, which has been determined to have the potential to result in severe scalding and create serious risk for older people and people with compromised health.
Pathway Retirement Home Caldwell County	\$2,500	\$2,500	Facility failed to assure that the Adult Care Home Bill of Rights was upheld. Facility failed to assure that residents received care and services which were in compliance with rules and regulations.
Summit Place of Kings Mountain Cleveland County	\$1,000	\$2,500	Facility failed to contact EMS or the resident's physician following a fall in the facility. The facility further violated the resident's rights by allowing him to remain on the facility floor for over two hours until the next staff shift reported to work, claiming an inability to lift the resident to a bed or chair. Per a DSS recommendation, training was assessed in lieu of a monetary penalty.
Wooded Acres Guest Home Beaufort County	\$3,000	\$3,000	Facility failed to assure that residents were supervised while they were raking and burning leaves on the property. One of four residents sustained serious burns from the fire. This resident was diagnosed with mental retardation. According to hospital records, the resident had suffered surface burns to approximately 9% of his body. During the incident, the other residents intervened to save this resident. Without their intervention, the resulting harm would have been more significant.

SEPTEMBER 2003 PENALTY REVIEW COMMITTEE ACTIONS

<u>Facility/County</u>	<u>DFS Proposed</u>	<u>PRC Approved</u>	<u>Explanation</u>
Alterra Clare Bridge of Wilimington New Hanover County	\$3,000	\$3,000	On January 25, 2003 Resident was admitted to the facility with diagnoses of Alzheimer's and hypothyroidism. The resident was ambulatory without assistance but required total care. Resident was discharged from the facility on February 3, 2003 and was observed to have great difficulty walking, with dirty hair and fingernails and exhibited a "pitiful and bewildered" demeanor. Physician described the resident as "a shadow of his former self" and diagnosed a pressure decubitus. Staff of the facility informed DSS that they had no knowledge of the skin breakdown or of the change in ambulation.
Broman Assisted Living Carteret County	\$2,000	\$2,000	Facility failed to provide adequate care and services. Facility also failed to immediately notify a resident's responsible person, appropriate law enforcement, or the DSS when resident's whereabouts were unknown. Resident who had been diagnosed with Mild Mental Retardation and adjudicated incompetent, with an assigned guardian, signed self out of facility with no known destination or person accompanying. Resident reported to the facility that another resident had raped her and that she had been arrested for shoplifting while away from the facility.
Countryside Villa Cumberland County	\$3,000	Abated	Facility failed to assure that at least one staff person on the premises was certified in CPR and choking management. Resident was choking and was given CPR by two male residents. Staff attempted "the method to get him to release food". Resident was admitted to the hospital due to cardiac arrest secondary to choking. Resident died due to choking episode. Facility stated that five staff were CPR qualified, but the certification was not in the file at the time. Penalty was abated.
Country Time Village #8 Buncombe County	\$1,000	\$1,000	Facility failed to notify the appropriate law enforcement agency and DSS when it was discovered that a resident had left the facility without notice and was unaccounted for. The resident is mentally ill and is known to endanger herself when outside of the home. The resident's whereabouts were unknown until the following day. Resident was at a convenience store 9 miles away.
Journey's Residential Care Iredell County	\$1,000	\$1,000	Facility failed to assure that staff administered medication and treatments according to orders by a licensed prescribing practitioner for two residents.
Knollwood Gardens of Lillington Harnett County	\$3,000	\$3,000	Facility failed to assure that adequate water was provided to all residents according to requirements and failed to assure that incidental medical care was provided as ordered by physicians for hydration of four out of four residents with medical histories of dehydration. Each of the four residents experienced multiple visits to the emergency room due to dehydration.
Mountain View Care Cnt McDowell County	\$1,275	\$1,275	Facility failed to correct violation in the area of Health Care within the specified date.
Pinewood Manor Hertford County	\$3,000	\$2,000	Facility failed to assure appropriate health care. Resident had spilled coffee on self during breakfast. Burns were observed by staff and reported to the supervisor. No incident report or follow-up documentation was made. Although staff continued to observe significant changes to Resident's skin condition, no immediate medical intervention was sought. Resident was eventually admitted to the hospital with third degree burns.
Rivendale Woods Unit E Buncombe County	\$250	\$250	Facility failed to correct violation within the specified time frame for failure to maintain appropriate hot water temperature.

North Carolina Direct Care Workers Association Accepting Memberships

We are pleased to announce that The Direct Care Workers Association of North Carolina (DCWA-NC) was incorporated in April of this year. The organization is accepting memberships from direct care workers, consumers, agencies and others who share its mission and values. The Association seeks to improve the quality of care provided to health and long term care consumers and their families by promoting education, professional development and public awareness of the interests of nurse aides, personal care attendants, mental health technicians and other direct care workers.

A major goal of the Association is to strengthen the direct care workforce and improve the quality of care delivered by direct care workers in nursing homes, home health agencies, mental health facilities and other caregiving settings across North Carolina. It also seeks to help make sure North Carolina has enough skilled, capable and committed direct care workers to meet the growing demand for quality long-term care – a goal shared by Friends of Residents. Association activities

include a Direct Care Workers Institute, which it will be held annually beginning in fall 2004 as an educational/training event. The Association also serves as a statewide source of public information about direct care issues

through its newsletter and web site; and it supports state initiatives focused on direct care workforce issues and quality of care. The establishment of the Association is one of several activities occurring under the Real Choice grant awarded to the North Carolina Department of Health and Human Services by the Centers for Medicare and Medicaid Services.



*Milford Evans, President, DCWA-NC
Nurse Aide, Alliance of AIDS
Serving the Carolinas, Carrboro*

Friends of Residents in Long Term Care is proud to be a founding sponsor of this important organization and we encourage our members to support it as well. The Association is filing for IRS tax-exempt status as a 501 (c)(3) non-profit corporation. To become an affiliate member or, receive more information

or obtain copies of the Association brochure, call the DCWA-NC at 919-715-3952 or visit the web site at www.dcwa-nc.org.



Membership Form Direct Care Workers Association of North Carolina

Mail Membership Form & Check To:
DCWA-NC, PO Box 37365, Raleigh, NC 27627
Make checks payable to DCWA-NC

Name: _____

Address: _____

City: _____ State: _____ County: _____

Phone: _____ Email: _____

Annual Membership Fees- Please select one:

- Direct Care Worker Full Membership: \$10 (open to actively employed direct care workers with 5 years experience)
- Student Membership: \$10 (open to students in training for employment as a direct care worker)
- Individual Affiliate Membership: \$25 (open to individuals including consumers and families)
- Corporate Affiliate Membership: \$100 (open to entities including providers, agencies and organizations)

Founding Sponsorship Levels

Individual:

- Bronze \$100
- Silver \$250
- Gold \$500
- Platinum \$1,000

Corporate:

- Bronze \$500
- Silver \$1,000
- Gold \$2,500
- Platinum \$5,000

Legislative Update: Medical Malpractice - What's at Stake?

By Patricia Yancey

Medical malpractice has been and continues to be a major public policy issue in North Carolina and nationally. Although medical malpractice was discussed extensively during the 2003 Legislative Session, especially in meetings of the Senate's Select Committee on Insurance and Civil Justice Reform, North Carolina's lawmakers concluded the Legislative Session and left Raleigh without resolving the issue. In the 2003 adjournment resolution, the Senate included plans to return to Raleigh in September to adopt malpractice legislation. Thus, on September 15, members of the Senate returned to Raleigh and adopted SB 802: Medical Provider Ins./Civil Justice Reform Act.

No medical malpractice law will be passed in 2003 because both the Senate and House of Representatives have to take action in order to ratify legislation or for it to become law. The legislation (SB 802) that passed the Senate in September 2003 is a beginning point for further legislative action. SB 802 did not contain a cap on non-economic damages; however, an attempt was made to amend the bill to include a \$250,000 cap. The amendment was offered by Senator Pittenger of Mecklenburg County, and was ruled ineligible for consideration (For details on SB 802, please visit www.forlrc.org).

In the House of Representatives, Speakers Black and Morgan have appointed a 28-member Blue Ribbon Task Force on Medical Malpractice. Further details and a list of the task force members are available at www.forlrc.org. To date, that task force has held two meetings. The Task Force is to report the results of its study and any proposed legislation to the House of Representatives on or before April 15, 2004. The task force was directed to consider the following:

- (1) The complex causes of and remedies for medical malpractice.
- (2) Rapidly escalating professional liability premiums for health care providers.
- (3) The impact of medical malpractice issues on health care accessibility in North Carolina.
- (4) Matters related to the adjudication of medical negligence claims in the civil justice system.
- (5) Issues related to the quality of medical care.
- (6) Other matters related to medical malpractice and its impact on health care access.

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The Malpractice Debate

The Case Against Malpractice Reform

Advanced by some consumers and trial lawyers

- Any cap on non-economic damages would shield negligent nursing homes from accountability for their misconduct.
- There is no conclusive case that a cap would reduce the premiums that doctors pay.
- Non-economic damages are a legitimate way to compensate injured patients and families in the most outrageous cases of medical misconduct.
- A jury that has heard the evidence presented by both sides in a case can best decide the correct amount of damages.
- There is no clear evidence to link caps on jury awards to lower malpractice rates.
- The argument of "runaway jury verdicts" is overstated and probably not related to increases in malpractice insurance premiums.

The Case for Malpractice Reform

Advanced by some doctors, hospital administrators, nursing home administrators, and insurers:

- Limits on payments to malpractice victims are necessary because doctors are quitting their practices, cutting back on services, limiting their practices, and limiting patients' access to care.
- Doctors and insurers must pay high legal fees to defend claims even when no award is made.
- A \$250,000 cap on pain and suffering damages is critical to curbing the cost of malpractice insurance that they say is driven by runaway jury awards.
- Excessive jury awards in malpractice cases have forced rates up to the point that they threaten the availability of health care, especially in rural areas. Physicians are opting out of high-risk medical specialties, such as obstetrics, to protect themselves.
- Non-economic damages are subjective and unpredictable, and bring instability to the rate-setting process.

Competing Interests

Medical malpractice is a contentious issue with many "heavy hitters" on opposing sides. The issue pits powerful interests against each other. Nearly 3,000 doctors flooded the halls of the Legislative Building in April 2003 to urge lawmakers to consider a proposal to cap some damages in medical malpractice awards. The trial lawyers have presented their case to members of the General Assembly by outlining the complex causes of and remedies for medical malpractice including reasons not to cap damage awards. Consumer advocacy groups such as AARP, NC Coalition for Patients Rights, National Citizens' Coalition for Nursing Home Reform, and Friends of Residents in Long Term Care have held press conferences and lobbied members of the General Assembly. These advocacy groups have voiced opposition to capping non-economic damages and to making inspection reports unavailable for use as evidence in court cases against a long-term care facility.

WHAT YOU CAN DO!

The Senate has formed and adopted its position on medical malpractice. The members of the House's Blue Ribbon Task Force on Medical Malpractice is in the process of developing a position that will be presented to members of the House in 2004. Advocates have an opportunity to help shape the House's position. Contact members of the Blue Ribbon Task Force on Medical Malpractice and share with them your views on medical malpractice.

Friends of Residents in Long Term Care Advocate's Message:

1) Do not place caps on non-economic damages in medical malpractice cases.

For the elderly and disabled who are without an earned income or earnings potential, non-economic damages are the only available remedy to compensate for painful injuries, permanent loss of limbs and ability to function, and death. Nursing home residents and their families sometimes are forced to turn to the civil justice system as a last resort to provide meaningful remedies for injuries and as a deterrent to future neglect and abuse. A cap on non-economic damages would deter attorneys from taking their cases.

2) Do not make inspection reports secret and unavailable as evidence in malpractice cases.

Inspection reports provide information needed to choose a long-term care facility. If information about how well a home is taking care of loved ones is made unavailable, then it would be much easier for a facility to neglect and abuse the elderly and the disabled. It would be difficult to prove neglect or abuse. Keeping inspection reports from the public would shield long-term care facilities from accountability for their misconduct.

3) Adopt legislation that includes incentives to reduce medical errors, keeps in place fair compensation when patients are hurt as a result of medical mistakes, and provides medical malpractice insurance at reasonable rates.

The best way to avoid malpractice payouts is to prevent malpractice from occurring. Where patients have reasonable remedies, there is a stronger incentive to avoid medical errors. Doctors with good records of patient care should be provided some assistance in securing malpractice insurance coverage.

****For the full report, please visit www.forlhc.org, or call the office at 782-1530.**

Have you Renewed your Membership?

It is that time of year again when we call on you - our members- to renew your support for the upcoming year. By now, you should have received your membership renewal in the mail. We depend on our members for the significant majority of our funding. We would not be able to continue our work for long term care residents without the support of our members. Please send in your renewal today!

The 2004 membership form is available on our website: www.forlhc.org/membership and on the back of this newsletter. You can also donate with a credit card through the link on our website.

A Special Thanks to the Following Local Merchants for Their Recent In-Kind Donations:

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Contributions from July - October 2003

Thank you to these and *all* of our contributors for helping us continue the work of this organization.

Please contact Donna Mehr if there are corrections to or omissions from this list.

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