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BEFORE THE ILLINOIS HOUSE AGING COMMITTEE

Protecting Illinois Seniors: Nursing Home Abuse and Neglect

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I am Jason Held, Staff Director of the Center for Justice & Democracy-Illinois, a public interest organization that is dedicated to educating the public about the importance of the civil justice system.

I appreciate the opportunity to address the issue of nursing home care in Illinois. Today, I will present testimony about the inadequacy of state regulatory agencies and programs to monitor, discipline and deter nursing home abuse and neglect.

Introduction and Summary

As Americans grow older, more seniors and their families are relying on nursing homes for their care. As of June 2007, there were 1,286 long-term care facilitiesⁱ operating in Illinois with a total of 123,556 beds.ⁱⁱ In 2006, there were over 1.5 million people 65 or older living in Illinois and this number continues to rise, as it does across America.ⁱⁱⁱ Even with advances in medicine many of our seniors will need long-term care.

Seniors and their families expect and deserve to receive proper care, attention and respect from nursing homes. Unfortunately nursing home abuse and neglect is a growing reality. Currently in Illinois, the state is poorly staffed, under resourced, and over-worked, unable fully to keep a watchful eye on the multi-million dollar industry that cares for Illinois' seniors.

Quality of Care Issues

After food sanitation violations, quality of care is the most common violation of federal regulations. These violations exist in almost one-third of all nursing homes.^{iv}

Illinois nursing homes ranked worse than the national average in 11 quality measures tracked by the Center for Medicare and Medicaid Services (CMS) in recent quality surveys. These nursing homes were more likely than the average nursing home to be cited for causing actual harm to residents.^v

In Illinois,

- 1 in 6 residents is likely to get a pressure sore,
- 1 in 6 residents is more depressed or anxious since the last time they were checked by state surveyors, and
- 1 out of 10 long-stay residents loses too much weight.^{vi}

A main reason for this is staffing issues. Illinois nursing home residents receive on average 3.1 hours of direct care, which is 11% lower than the national average and much lower than the 4.1 hours that the federal government suggests.^{vii}

Historically, these quality of care issues increase with the trend in the consolidation and corporatization of the industry. With these kinds of problems on the rise, state regulatory agencies are ill equipped to handle the situation.

Illinois Department of Public Health

Nursing homes in Illinois are licensed, regulated, inspected and/or certified by a number of public and private agencies at the state and federal levels, including the Illinois Department of Public Health (IDPH) and the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS). These agencies have separate -- yet sometimes overlapping -- jurisdictions. Each year, IDPH surveyors conduct about 10,000 surveys, including annual licensure inspections, complaint investigations and re-inspections. The Department's "24-hour a day Nursing Home Hotline... receives nearly 19,000 calls and, as a result, staff responds to more than 5,000 complaints."^{viii} With complaint numbers on the rise and with the department's current workload and resources, the Department is under-resourced.

Violations.

The most serious violations are categorized by the IDPH as "A violations." Examples of A violations that occurred in 2006 in Illinois include:

- [F]ailure to prevent sexual abuse of a resident, and not reporting the incident to the proper authorities.^{ix}
- [U]sing restraints for staff convenience, resulting in possible mental abuse. A resident was locked in a linen closet and two residents were tied to their beds with sheets.^x
- [F]ailure to prevent a medication error when staff gave a resident ten times the amount of the ordered dose. Staff also failed to notify the resident's doctor about the overdose. The resident died two days later.^{xi}

Even with the state oversight, the most serious violations continue to rise in Illinois. Over a recent seven year period, "A violations" steadily climbed in Illinois, going from 45 in 2000 to 177 in 2006. This is an increase of almost 400 percent.

Reporting.

Even though IDPH receives and investigates thousands of complaints annually, the total picture of violations is incomplete. According to Marshall Hayes, Executive Director of Elder Care Services in DeKalb County, "Officials estimate only one in ten cases is reported."^{xii}

Nursing homes often report abuse allegations to the state late, or they do not report at all. A 2005 Government Accountability Office (GAO) study found that "Serious complaints by residents, family members, or staff alleging harm to residents remained uninvestigated for weeks or months."^{xiii} This is a widespread problem across the US and in Illinois.

Obviously, state regulations are not having the fully intended impact. It seems clear that they are not deterring increasing problems in the industry.

Citations and Fines

The predominant means that the state uses to deter wrongdoing is its ability to issue citations and fines, called CMPs, or civil money penalties. Unfortunately, often state surveyors do not cite violations at all or, if they do, they cite them at an inappropriately low level.^{xiv} As such nursing homes often will not receive the correct punishment or fine given the scope or severity of the abuse and/or neglect.

According to a CMS official, “the CMPs being imposed are not enough to ‘make nursing homes take notice’ or to deter them from deficient practices. Another CMS official stated that some homes consider CMPs a part of the ‘cost of doing business’ or as having no more effect than a ‘slap on the wrist.’”^{xv}

Moreover, due to “systematic reductions, appeals, settlements, and bankruptcies,” most fines are so diminished that operators pay only cents on the dollar of the original fine.^{xvi} Virtually every fine is contested in Illinois, and the majority of fines are settled years later. IDPH fined nursing homes more than \$8 million from 2000 to 2006 and these fines were reduced to just over \$1.4 million.

Failure to collect fines is another problem impeding efforts to punish and thereby prevent nursing homes from fixing serious problems that cause abuse or neglect. In Illinois, from 2000 to 2006, the yearly total fines collected equal just over half of the reduced amount.

Long Term Care Ombudsmen

The state’s Long Term Care Ombudsmen are mandated to protect, defend and advocate for residents in long term care facilities, supportive living facilities, and assisted living and shared housing establishments.^{xvii} The program is designed to help residents through the system, but many complain that there is lack of access to these resources and the Ombudsmen do not have any enforcement power and thus must rely on follow-up by IDPH or other state or local offices. Recently the state has expanded the role of the Ombudsman program to include people under the age of 60. While this is a good step in helping all residents, it places greater burden on an already struggling system and this legislation did not come with increased funding.

Having spent time talking with families of victims of nursing home abuse and negligence, I can attest to the fact that a general sense of frustration is always present. Due to an ineffectual bureaucracy, confusing procedures and lack of resources many complaints go unheard and abuse continues. In addition, many victims are unable to voice their complaints out of fear of retribution.

Conclusion

Currently, there are numerous shortfalls in the state’s ability to monitor, punish and deter wrongful actions by nursing homes.

I urge this committee to look at the problems that currently exist within the nursing home industry and state regulation in Illinois, as well as, the future problems that will be caused by its further consolidation.

ⁱ Total facilities, including “licensed” and “certified only.”

ⁱⁱ Total beds, including “licensed” and “certified only.” Illinois Department of Public Health, “Long Term Care Statistical Report,” 1 June 2007.

ⁱⁱⁱ U.S. Census Bureau, 2006 American Community Survey [database online] accessed 21 November 2007; available from http://factfinder.census.gov/servlet/ADPTable?_bm=y&-context=adp&-qr_name=ACS_2006_EST_G00_DP5&-ds_name=ACS_2006_EST_G00_&-tree_id=306&-redoLog=false&-_caller=geoselect&-geo_id=04000US17&-format=&-_lang=en.

^{iv} Ibid.

^v “A new commitment to quality care,” Service Employees International Union, Local 4, February 2007, p. 1.

^{vi} Ibid, p.3.

^{vii} Ibid, p.4.

^{viii} Illinois Department of Public Health, “Nursing homes in Illinois,” [database online] accessed 21 November 2007; available from <http://www.idph.state.il.us/healthca/nursinghometestjava.htm>.

^{ix} “Nursing home violations for the month of January,” News release from the Illinois Department of Public Health, 10 March 2006.

^x “Nursing home violations for the month of February,” News release from the Illinois Department of Public Health, 17 April 2006.

^{xi} “Nursing home violations for the month of November and December,” News release from the Illinois Department of Public Health, 21 May 2007.

^{xii} Victoria A.F. Camron, “Abuse of elders goes unreported, committee says; Group’s goal is prevention,” Metro, Chicago Tribune, 24 March 2004.

^{xiii} “Nursing homes: Despite increased oversight, challenges remain in ensuring high-quality care and resident safety,” United States General Accounting Office Report to Congressional Requesters, December 2005, p.2.

^{xiv} “Nursing homes: Despite increased oversight, challenges remain in ensuring high-quality care and resident safety,” United States General Accounting Office Report to Congressional Requesters, December 2005, p. 9.

^{xv} “Nursing homes: Efforts to strengthen federal enforcement have not deterred some homes from repeatedly harming residents,” United States Government Accountability Office Report to the ranking minority member, Committee on Finance, U.S. Senate, March 2007, p. 24.

^{xvi} “Nursing home enforcement: The use of civil monetary penalties,” Department of Health and Human Services, Office of the Inspector General, April 2005, p. i.

^{xvii} Long Term Care Ombudsman Standards, 1 December 2003, Sect. 101 Ch.1 p.1.