



FATE

Newsletter of Foundation Aiding The Elderly

President's Message

NURSING HOMES...BUSINESS AS USUAL

by Carole Herman

In 1987, President Ronald Reagan signed into law the Omnibus Budget Reconciliation Act (OBRA), the first major version of the Federal standards for nursing home care since the 1965 creation of both Medicare and Medicaid (MediCal in California). Long-term care facilities wanting Medicare and Medicaid funding were to provide services so that each nursing home patient could attain and

maintain the highest physical, mental and psycho-social well being. However, almost 20 years later, poor care and abuse are still too common an occurrence in the approximately 16,000 nursing homes in the United States.

Why is this poor care and abuse still occurring? There are many reasons why and at the top of the list is the fact that state agencies responsible for

overseeing nursing home care often fail to make sure problems in the facilities are corrected. A huge qualifier is staffing requirements. If a facility is insufficiently staffed, as most are, odds are that care is not being provided and patients are suffering because of it. A nursing assistant who has 15 or more patients to care for during a shift can not possibly give the



CAROLE HERMAN

proper care and attention that the patient requires. Yet the regulators are not slapping the hands of the operators for not providing sufficient staff as required by law. Because of California's failure to regulate nursing home staffing requirements, FATE brought a lawsuit to force the California Department of Health Services to set regulations establishing minimum staff to patient ratios as required by law. This requirement

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FOUNDATION AIDING THE ELDERLY
Post Office Box 254849
Sacramento, CA 95865

(916) 481-8558
www.4fate.org



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 Sacramento, California 95865-4849
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FATES MISSION IS:

"Assuring our elders are treated with care dignity and the utmost respect during their final years when they can no longer take care of themselves."

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- Elderly Service Referrals
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State Conservatorship Reforms Approved

After last year's Legislative Hearings of the California Senate Joint Committee on boards, Commission and Consumer protection to review the scope and practice of California's Professional conservators, the Legislature overwhelmingly approved the most far-reaching changes to California's conservatorship system in nearly thirty years. Lawmakers endorsed a package of reforms requiring professional guardians to earn state licenses and intensifying court supervision over how they care for the state's vulnerable adults under conservatorships. FATE gave testimony during the hearings and along with other advocates for the elderly hailed the measures as an important first step in restoring public trust in a deeply troubled system. The push for reform was triggered by the L.A. Times investigation published last November that described how some professional conservators were able to swiftly gain control over the lives and finances of elderly adults without their knowledge or consent, then neglected their wards, isolated them from relatives and ran up fees. Gov. Schwarzenegger signed the bills and California became the nation's sixth state to license or certify professional conservators following in the footsteps of Arizona, Washington, Florida, Alaska and Nevada.

Advocates would now like to see the Legislature look into how the public guardian system works to make similar changes to improve the government's guardianship system.

NURSING HOMES...BUSINESS AS USUAL

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by the Department was to become effective in 2003; however, as of the first of November 2006, it had never been carried out by the Deputy Director of the Department. Insufficient staffing is not an isolated California problem, but is an on-going national problem causing most of the poor care and neglect in the nation's nursing homes.

In addition to the staffing issue, state investigators have been notoriously in violation of their mandated time to investigate complaints. In California recently, an advocacy group had to file a public interest law suit to force the Department of Health Services to do their job and investigate consumer complaints in the manner dictated by law. Instead of the 45 days to adjudicate a complaint, most complaints had not been completed for over 8 months. It is unfortunate that because the Department has been unwilling to do its job that it takes intervention of the courts to force a state government agency into compliance with the laws it is charged with carrying out.

In September 2006, a study conducted by Consumer Reports concluded that nursing homes are not much better today than they were back in 1987. The Consumer Report investigation also found that the state agencies responsible for overseeing nursing home care have often failed to correct problems. The Report also stated that deficiencies written by state inspectors has increased since 2003; however inspectors appear to be watering them down. The monies that the industry receives from our tax dollars

continues to climb, the owners bottom line profits continue to grow, investors' return on their financial investment continues to rise, fraud of the MediCare and Medicaid systems is on-going, millions of political contributions from the nursing home industry continue to line the pockets of politicians, and most importantly, the poor care and neglect of our loved ones continues to be on the rise with little to no government intervention of an industry that derives the majority of its wealth from our tax dollars.

The Consumer Report also states that ...“messages from legislators, subtle and not so subtle, filter down to regulators, who have learned that nursing homes will challenge them if they press too hard”. This pressure gives facilities the confidence to push back in so many ways, like appealing citations and sanctions because they know that state legislators tend to be very protective of homes in their districts. Critics also claim that the inspection process has been corrupted by the industry and as a result, the large for-profit chains are escaping punishment for blatant violations of federal laws set in place to ensure the proper care of nursing home patients.

Since this nursing home system doesn't seem to be working, maybe it's time to close down all nursing homes in the country and start all over again with a different plan. Perhaps the billions of dollars the government gives to nursing homes should be given to each of us who wish to remain in our homes and be cared for by people of our choice.

**The Vocation of every Man and Woman
is to serve other people**

- Leo Tolstoy, War and Peace

Missouri Showing the Nation Where Bad Nursing Home Owners Belong...In Jail

By Violette King
Nursing Home Monitors

Three years ago, attorney and Claywest House Healthcare owner Charles Kaiser, III received the maximum sentence the law allowed for failing to report abuse that led to the death of a patient in his facility...one year in the County Jail and a \$1,000 fine. Several months ago, the former CEO of the same company, Robert Wachter, pled guilty to defrauding Medicare and Medicaid by providing "next to no care" to the patients in the same nursing home.

In the initial expose, 10 certified nurse aides staged a walk-out to protest substandard conditions and neglect of patients. Nursing Home Monitors tracked down all 10 of these aides, who described hideous conditions of filth, skin peeling off patients when they were turned due to lack of bedding and chronic understaffing to name a few of the problems. When a reporter from the Post Dispatch first entered the facility after the walkout, management assured her that the problem was caused by disgruntled workers. However, when I took her for a return visit that evening, she saw a different picture.... a picture of Hell.

A favorable outcome on the complaint filed by Nursing Home Monitors with the National Labor Relations Board on behalf of the workers who were fired after the walkout helped to keep the news fires burning. We then met with the Missouri Division of Aging in Jefferson City. Two months later, a team of inspectors from out of the area entered the facility after midnight and found horrific neglect, including patients suffering from dehydration, malnutrition and bedsores. Later that year, the death of an Alzheimer's patient and a call from a suspicious funeral home director to the Coroner, brought full circle the events that began with the walk-out of the aides.

The unsung heroes of this incredible saga are the aides who walked out in protest in order to bring

attention to the often torturous conditions prevailing in one of St. Louis County's seemingly prestigious nursing home facilities. All of these workers lost their jobs and were blacklisted from working in the industry. I have learned that it has taken a larger amount of effort and money than even I imagined to bring these criminals to justice.

This was a ten year experience that helped me to understand why it is not feasible for the government to pursue these cases more often. It is a matter of cost. It makes me sad and frightens me to think that if the government cannot stop them, can anyone? Especially now that tort reform has further curtailed our access to the courts in Missouri. It was easier when I did not understand just how difficult and costly it is and I could blame the government for much of the nursing home abuse and neglect. What I have learned makes this case all the more special. My endless thanks to the fired aides, the St. Charles Missouri law enforcement entities, the court system, the OIG, FBI, US Attorney's office, the St. Louis Post dispatch and St. Charles newspapers and the attorneys.

Robert Wachter is scheduled to be sentenced on February 28, 2007 at 1:00 p.m. in the St. Charles, Missouri Courthouse. Relatives of the victims suggest that Wachter will be treated better in prison than their loved ones were in his nursing homes.

(Note: Violette King is the Executive Director and Founder of Nursing Home Monitors. She formed this organization after the death of her father in a Beverly Enterprise facility in 1995. Violette gained national attention when she was arrested at a Beverly stockholder's meeting in Little Rock, Arkansas for showing pictures of the bedsores her father developed in one of Beverly's facilities. She has worked diligently since to bring about the awareness of poor care and abuse in the nation's nursing homes)

DRUGS TO CURB AGITATION ARE SAID TO BE INEFFECTIVE FOR ALZHEIMER'S

The New England Journal of Medicine recently conducted a study on drugs used to soothe agitation and aggression in people with Alzheimer's disease and found that the drugs most commonly used are no more effective than placebos for most patients, and put them at risk of serious side effects, including confusion, sleepiness and Parkinson's disease-like symptoms. The report was published in October of 2006 and was based on a large government comparison of the drugs' effectiveness and has challenged current practices so drastically that it could alter prescribing habits. About 4.5 million Americans suffer from the progressive dementia of Alzheimer's disease, and most patients with the advanced disease exhibit agitation or delusions at some point.

The drugs tested in the study, Zyprexa, Seroquel and Risperdal, belong to a class of medications known as antipsychotics. The drugs are used to treat schizophrenia and other psychoses and are commonly prescribed for elderly patients in long-term care facilities. The report states that about a third of the estimated 2.5 million Medicare beneficiaries in nursing homes have taken the medications. The use in the elderly accounts for an estimated \$2 billion in the annual sales of the drugs, most of the cost paid by Medicare and Medicaid (Medical in California). The report notes that the drugs were not approved by the FDA for use in

Alzheimer's patients, and that the pharmaceutical companies that manufacture these drugs (Johnson & Johnson, Eli Lilly and AstraZeneca) did not market them for this purpose.

Dr. Jason Karlawish, an associate professor of medicine at the University of Pennsylvania, wrote an editorial accompanying the study and stated that there is a question as to whether these drugs have a place in the treatment of Alzheimer's patients at all. He further states that the answer would be yes, but only for a subgroup of patients who can tolerate them and in facilities that have the expertise to manage the side effects. Dr. Thomas Insel, director of the National Institute of Mental Health, which financed the research, said, "what this study shows is that these drugs are clearly not the answer; they may be helpful for a minority of patients, but we need to come up with better medications."

The report is the third large study in the last year to conclude that antipsychotics are not as effective or as safe as initially portrayed but are commonly prescribed by company-sponsored doctors promoting them.

Several years ago, it became law for nursing home patients that informed consent by the patient or the patient's surrogate decision maker must be given prior to the administration of any antipsychotic medications.

Law Enforcement Update: Identity Theft in Nursing Home

When it comes to identity theft, most people do not think about this happening in nursing homes. However, last December, a former Hillsboro Texas nursing home activity director pled guilty to two charges of fraudulent use of identifying information. The Hillsboro Police Department discovered the woman had stolen the personal information of two residents to obtain utility services at her personal residence and then diverted funds from one resident's bank account to pay the bill. Greg Abbott, the Texas Attorney General, had the Medicaid fraud control unit within his office conduct investigations with the assistance of local law enforcement to uncover Medicare and Medicaid fraud in Texas nursing homes and uncovered billing records that implicated the former activity director and prosecuted the case.

Medicare and Medicaid fraud comes in many forms, from financial exploitation to fraudulent reimbursement claims for services or products not provided to include physical abuse and neglect. Texas has reported that some police departments have created specialized task forces to conduct training in elder abuse prevention issues. These types of initiatives offer valuable resources and services to victims and families. Attorney General Abbott stated that abuse against senior Texans will not be tolerated and that his bureau will crack down on crimes being committed against the elderly.

Most states have Medicare and Medicaid fraud units within the Attorney General's Office and any suspected abuse or fraud should be immediately reported to this agency.

HSS Provides Funding To States for Alternatives to Nursing Home Care

HSS Secretary Mike Leavitt announced in August that states will get additional help from the federal government to support elderly and disabled Medicaid recipients who wish to live in the community rather than institutions. Through competitive grants, Centers for Medicare and Medicaid will give states a total of \$1.7 billion over five years to help shift Medicaid from its historical emphasis on institutional long-term care services to a system that offers more choices for seniors and persons with disabilities. States interested in applying for the grant can propose new programs that are aimed at sustaining people in their homes who would have otherwise received care in a nursing home or other institutions. "With this program, people who need long-term care and prefer to live in their own homes and communities can do so", Secretary Leavitt said. This endeavor is also a part of President Bush's New Freedom Initiative.

Minority Are Medication Free

According to a recent study by the Kaiser Family Foundation and the Commonwealth Fund, approximately 11 percent of Americans age 65 and older do not take any prescription drugs. On the other side of the spectrum nearly half of all older Americans take five or more medications daily. In a 2001 survey, the Minnesota Board on Aging, found that older people who do not take prescription drugs tend to participate in vigorous physical activities, are free of depression and do not worry about their health. As a rule, the medical researchers do not seem to have paid much attention to the sizable number of Americans who do without drugs. In the study, a 66 year old retired physical therapist credits the secret to diet, eating whole-grain bread,

mostly fish and white meat, lots of fruits and vegetables, a limited amount of desserts and plenty of water. Another 81 year old says exercise has kept him from taking medications. He walks three to four times a week, swims and lifts weights. He stated that when his doctor measures his resting pulse rate he always wants to put him on drugs, but he always declines. To know more about medications and their adverse side effects, always consult with your pharmacists. You can also read up on medications in the book "Worst Pills/Best Pills", A Consumer's Guide To Avoiding Drug-induced Death or Illness, published by Public Citizen's Health Research Group in Washington, D.C. or go to the internet and Google medications.

BOOKS OF INTEREST

The Baby Boomer's Guide to Nursing Home Care

Authors, Eric Carlson and Katherine Hsiao, attorney with National Senior Citizens Law Center...\$12.70

20 Common Nursing Home Problems and How to Resolve Them \$9.95

Order both books through National Senior Citizens Law Center

1101 – 14th St., NW, Suite 400, Washington, DC 20005 Phone (202)289-6976

Dementia Care Practice..Recommendations for Assisted Living Residences and Nursing Homes

Published by Alzheimer's Association

For information, visit www.alz.org or call (800)272-3900.

Maltreatment of Patients in Nursing Homes... There is No Safe Place

By Diana K. Harris and Michael Benson

Published by Haworth Press, Inc.

www.haworthpress.com

NURSING HOME COMPLAINTS

One of FATE's services is filing complaints with the state regulatory agencies on behalf of nursing home, assisted living, residential care and acute care hospital patients and residents. Some of these complaints result in the appropriate state department citing these facilities for violations of Federal and State regulations. The following are the results of some of those complaints:

Arden Rehab and Care Center, Sacramento, CA

Deficiency:

Failure to provide sufficient staff to take care of patients in accordance with regulations.

**Applewood Care Center, Sacramento, CA
Class AA Citation, \$100,000 assessed penalty.**

Failure to implement the written admission policy and procedure for residents' rights that prohibited neglect of the resident which resulted in her falling down concrete stairs causing resident's skull to be crushed; failure to develop and implement a system to ensure that the emergency door alarm was turned on to prevent an accident; failure to ensure resident received an adequate care plan for risks of falls and failure to ensure patient received adequate supervision to prevent fatal fall. As a result, patient's injuries resulted in death.

Asbury Park Nursing & Rehab, Sacramento, CA...

Deficiencies:

Failure to ensure weekly progress notes were completed to meet patient's needs. Failure to update patient care plan and the patient's response to care and treatments; Failure to ensure weekly progress notes were completed that were specific to patient's needs; Failure to ensure that Physician orders were carried out.

Canyonwood Nursing Center, Redding, CA

Deficiencies:

Failure to ensure minimum staffing per regulations and failure to follow physician orders as prescribed in order for patient's head to be protected from injuries caused by falls.

Hill Family Care Home, Sacramento, CA

Deficiencies: \$500.00 penalty.

Failure to provide supervision and required assistance causing elderly resident to suffer numerous falls with injuries. Operators also was not licensed to care for elderly residents.

Puri's Residential Care Home, Sacramento, CA...

Cited for failure to notify resident's physician and responsible party of the onset of bedsores; Allowing resident to remain in facility with stage III and stage IV bed sores; failure to supervise care of bed sores; failure to exhibit knowledge of the requirements for providing care and supervision; and failure to maintain personnel records.

Windsor House Convalescent Hospital, Vacaville, CA

Class A Citation, \$18,000 assessed penalty.

Failure to perform on-going assessment of a resident with diabetes mellitus; failure to notify doctor promptly of severe changes in the blood sugar of a diabetic patient; failure to administer medications per doctor's orders and failure to establish and implement a policy for the management of a patient with diabetes experiencing severe changes in blood sugar. The facility failed to perform assessment of the patient relative to the unstable blood sugar; failed to notify the doctor each time, failed to administer insulin as prescribed and failed to send patient to the hospital promptly when patient was found in an unconscious state. These failures resulted in the patient experiencing uncontrolled blood sugars resulting in an unconscious state and subsequent vegetative state and presented an imminent danger that death or serious harm would result.

Yuba City Care Center... Yuba City, CA

Class B Citation: \$800.00 assessed penalty.

Failure to provide sufficient staff to take care of patients in accordance with regulations. Violation had a direct relationship to the health, safety or security of patients.

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