

Elder Abuse ~ What You Don't Know Can Kill You! By Brett Schreiber

The Times They Are A Changing...

Over 6,000 people in the United States of America turn 65 everyday. Take that and multiply it by 30 days in a month and there are 180,000 people entering Medicare every month. Not to mention, many of the Baby Boomer Generation aren't even there yet. In four years (2012) this number will reach 10,000 per day which is 300,000 every month.

The good news is that people are living longer, while the bad news is the same.... people are living longer! This means more of our parents, our loved ones, and even ourselves will be rapidly approaching the need for long-term extended care. Skilled Nursing Facilities (SNF's), commonly referred to as "nursing homes" or "retirement homes", are likely to be the final stop for many of us. As our population grows and ages, the need for more SNFs will increase and the burdens placed on Medicare, Medi-Cal, private health insurance, and/or families for the costs associated with such treatment will increase as well.

Unfortunately, more elderly patients requiring more long term care in more beds in more SNFs has lead to one thing - more cases of elder abuse and neglect. Despite the fact that private companies which own these SNFs have never done better financially. A recent study by the University of San Francisco¹ found that while profits are up 233% the amounts of money actually spent on patient care is down 4%. Similarly, in this time of windfall profits for SNF owners and operators, the number of complaints of patient mistreatment are up 38% and state and federal citations of neglect are up 6%. All of this leads to one conclusion - the long term managed care system in place for the elderly of the United States is sick and in dire need of care!

Doing Your Homework

So what does this mean for all of you? In the State of California, numerous resources exist to allow prospective residents and their families to look into the quality and quantity of care provided by a particular SNF. Both the California Department of Health (formerly California Department of Health Services) and the California Office of the Ombudsmen keep detailed statistics of incidences of abuse, neglect, and mistreatment in all SNFs in the state. Similarly, the California Attorney General's www.safestate.org provides access to resources for identifying, reporting, and documenting mistreatment of the elderly. While there are countless for-profit websites that summarize the public records available on SNFs throughout the state and then "rate" a particular SNF based upon those records, such sites are no alternative to reviewing the annual reviews and complaints lodged against a particular SNF. This information is available to anyone who walks into a Department of Health regional office and asks for the public file on a particular facility. Before entrusting the care of yourself or someone you love to one of the many SNFs in the California a trip to your local Department of Health office to review the file of the particular facility is a must!

¹ See Harrington, C., O'Meara, J., Collier, E., Kang, T., Stephens, C. & Chang, J. (2008) Impact of California's Medi-Cal Long Term Care Reimbursement Act On Access, Quality and Costs. Published on the Center for PAS website.

What to do if you or a loved one have been a victim of abuse or neglect?

There can be no greater relationship of trust than placing the long-term care of yourself or a loved one into the hands of a SNF. For many of us, the decision to enter a SNF - for ourselves, our parents, or others who can no longer care for themselves - is one of the toughest decisions we'll ever have to make.

Time and again, I've heard prospective clients in elder abuse cases repeat the same mantra, "I never thought this would happen; I thought this was a good facility". Sadly, many of these family members blame themselves for the decisions they've made when their family member is abused, neglected or mistreated at a SNF. Similarly, during the course of litigation, lawyers representing the SNFs will review sign-in sheets, call logs and other information recorded by the facility, to try and paint the aggrieved family members as calloused and uncaring. They will cross-examine family members on how many times they visited the facility, how often they called, and how many birthdays or other holidays they shared with their loved ones who were residents at a facility.

Nevertheless, before contacting an attorney regarding any alleged abuse, neglect or mistreatment of yourself or family member at a SNF, one should first contact the local Department of Health office. Certain incidences of abuse or neglect require self-reporting by a SNF, however, most do not. In those instances, if an objective third-party investigation is to occur on a particular complaint someone must first contact the local department to have an investigator dispatched. Similarly, the Office of the Ombudsmen and in certain cases of financial and physical abuse, the California Attorney General's office, will also send investigators to look into claims. It is of the utmost importance to document these claims, not so much for the purposes of subsequent litigation, but rather because these investigations, even if determined to be unfounded, become part of the public record on a particular facility. Often times, changes in management or operations of a SNF will result in an increase number of complaints against the facility. If you or someone you love was considering entering such a facility, a spike in complaints - even unfounded ones - should be a tell-tale sign to look elsewhere.

Additionally, if an elder abuse/neglect case is to end up in litigation, having the investigative file of the reporting agency in hand will assist in locating witnesses, discovering critical evidence and identifying employees and co-residents who are often times transferred between facilities. Similarly, if the investigation by an agency results in the issuance of a fine and citation against a particular SNF, that evidence can be used in the subsequent civil matter to establish a finding of liability against the facility. Needless to say, the importance of documenting the complaints, and calling upon the appropriate agencies to investigate, is a necessary and important tool both for the safety and well-being of the particular resident, but also for all those who may become residents.

Conclusion

While it is true that the picture of the landscape of the elder abuse system in this country looks bleak, all is certainly not lost. The owners and operators of these facilities are seeing all-time high profits and we as a society must demand that more money is poured back into patient

care and not into the coffers of the trans-national corporations which own stake in SNFs throughout the country. Fortunately, California has in place an excellent statutory framework to hold SNFs accountable for their actions and to provide mechanisms for individuals and family members to report incidences of abuse and neglect. In addition, our civil justice system has continued to be one of the few places where an aggrieved resident and his or her family can obtain a measure of justice for the damage inflicted upon them by a SNF. While it is true that our population is growing older, hopefully we too are growing wiser, and through legislation, civil action, and vigilance we can ensure all of us will be provided a safe, caring, and supportive environment to live out our final days.