

## SAFETY IN NURSING HOMES

# "At least Mom will be safe there": the role of resident safety in nursing home quality

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When family members admit a loved one to a nursing home, they expect that the facility will assure the physical safety of the residents. However, this does not always occur. Safety concerns persisting in at least some modern American nursing homes involve adverse drug events, injurious falls, pressure ulcers, problems with tube feeding, faulty communications or other breakdowns during transfer to or from hospital, and equipment breakdowns or mix-ups. The adversarial legal, economic, political, and media environment surrounding the US nursing home industry poses serious practical impediments to alleviating these safety concerns more effectively. However, resident safety comprises only one part of the larger quality improvement picture in the nursing home context. While the threat of negative legal repercussions may be necessary to address safety issues, a fuller concern about improving the quality of care and quality of life for nursing home residents will also involve the development and implementation of a combination of positive incentives for facilities to do better.

themselves to the necessity of nursing home admission are able to tell themselves: "At least Mom will be safe there".

Sometimes, however, family members are dreadfully wrong in making the assumption that the nursing home is a safe environment for its residents. This paper begins by outlining some of the safety concerns which persist in at least a portion of modern American nursing homes and the most serious practical impediments to alleviating those safety concerns more effectively. This is followed by an examination of how resident safety comprises only one part of the larger quality improvement picture in the nursing home context. While the threat of negative legal repercussions may be necessary to address safety issues, a fuller concern about improving the quality of care and quality of life for nursing home residents will also require the development and implementation of a combination of positive incentives.

### SAFETY CONCERNS IN NURSING HOMES

The safety of nursing home residents may be jeopardized by a variety of systemic errors or shortcomings occurring within a facility. Unsafe situations in this setting include adverse drug events,<sup>6–9</sup> injurious resident falls,<sup>10</sup> pressure ulcers,<sup>11,12</sup> problems with tube feeding,<sup>13</sup> faulty communications or other breakdowns when a resident is transferred to or from the hospital, and equipment breakdowns or mix-ups.<sup>14</sup> Beyond these safety concerns, which are associated with institutional omissions or inadvertent mistakes, intentional abuse of residents by staff in some facilities has also been documented.<sup>15</sup>

One important component of a successful strategy to address these safety problems is the encouragement of nursing home personnel to be more forthcoming in reporting and disclosing errors. However, many of the same factors that act as obstacles to the implementation of aggressive error reduction programs in hospitals and outpatient contexts apply with full, or even arguably greater, force in the case of nursing homes. Specifically, the pervasively adversarial—bordering on poisonous—legal, economic, political, and media environment surrounding the US nursing home industry<sup>16</sup> creates a set of powerful negative incentives which discourage nursing home personnel from openly admitting (as a prelude to attempting to rectify) resident safety problems in their own facility.<sup>17</sup> Personnel have a widespread and quite reasonable apprehension that disclosing instances of unsafe resident care may well expose the facility, and staff members

There are approximately 17 000 nursing homes presently operating in the United States, with a total bed capacity of about 1.8 million.<sup>1</sup> Over 90% of nursing home residents are over the age of 65, and almost half are over 85; the average age is more than 80.<sup>2</sup> On the whole, nursing home residents are older and more physically and/or mentally disabled than persons using home and community based long term care services, as reflected in the high proportion of nursing home residents needing assistance with three or more activities of daily living (ADLs).<sup>3</sup> The substantial rise in the illness and disability acuity and complexity level of nursing home residents over the past decade reflects the fact that institutional placement is reserved today for those individuals who eventually have no viable long term care choice.

For many individuals who enter a nursing home, the admission decision is made—either formally or de facto<sup>4–5</sup>—by relatives when the person's care needs can no longer be met in a private home or a communal living setting. For relatives making the difficult decision to admit a loved one to a nursing home, often the primary consideration is their physical safety. Although this placement choice is almost always accompanied by regret and guilt, family members resigning

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individually, to substantial regulatory sanctions, civil liability (and a resulting increase in the premium price of liability insurance coverage), and criminal prosecution. Further, there is a realistic anxiety that openly addressing safety problems is likely to subject a nursing home to negative publicity and hence damage the facility's ability to attract residents in an increasingly competitive marketplace.

Despite these barriers, families who admit their relatives to nursing homes understandably expect those facilities to do a better job of identifying and proactively addressing systemic problems that jeopardize the safety of residents. However, focusing on resident safety—no matter how important an aspect of care it is—cannot by itself assure that nursing home residents will enjoy the high quality experience that they deserve.

### QUALITY OF CARE AND QUALITY OF LIFE

Public regulators and the private marketplace expect nursing homes—as long term care providers in which most residents live until they die—to provide residents with a quality of care and quality of life that is not only medically and physically safe, but also like home.<sup>18</sup> In cultivating an environment that satisfies these legitimate quality expectations, maintaining resident safety is only a necessary, but far from sufficient, first step. To concentrate too exclusively on maintaining medical safety would represent an impoverished, minimalist approach, satisfied simply by avoiding harm, that neglects the nursing home's responsibility to maximize the well being of its residents more holistically to the greatest extent feasible.<sup>19</sup>

To illustrate the breadth of a nursing home's affirmative responsibilities, under the heading "Quality of Life" the Medicare/Medicaid certification regulations<sup>20</sup> impose detailed requirements regarding, among other things: resident dignity, self-determination and participation, participation in resident and family groups, participation in the outside community, accommodation of individual needs and preferences, activities, private space, comfort, and comprehensive individual assessments and care plans. In addition, the regulations contain an extensive section devoted entirely to respect for and promotion of resident rights.<sup>21</sup>

In a 1996 survey of nursing home administrators, directors of nursing, regulators, ombudsmen, and resident advocates, the most important quality items identified went far beyond resident safety. Under quality of care, respondents rated highest the general quality of care, maintenance of activities of daily living, and appropriate treatment for impairment in activities of daily living. The three top quality of life items were dignity, self-determination and participation, and accommodation of resident needs. The most important residents' rights items were to be able to exercise general rights, to be informed of one's condition, and to be free of reprisal when making complaints.<sup>22</sup> A more recent ranking of nursing home quality indicators done by an expert panel similarly gave highest priority to items generally not associated with a focus on the absence of medical and nursing errors.<sup>23</sup>

Regulatory and private expectations about a nursing home's affirmative obligations to foster quality of care and quality of life are not only not co-extensive with a facility's more constrained duty to protect resident safety, but in some circumstances may actually conflict with safety considerations. Providers overwhelmingly believe that paternalistic actions on their part (such as initiating guardianship proceedings that otherwise might have been delayed or avoided) are compelled by the providers' need to ensure resident safety as a matter of prudent legal risk management, even at the expense of other goals.<sup>24</sup> Put differently, many nursing homes act—correctly or not—as though respecting the decisional rights of residents, especially decisions to take risks, will expose those residents to harm and therefore expose the provider to malpractice claims brought by family members or

regulatory citations and sanctions at the hands of state surveyors or federal prosecutors if the risks should materialize. Providers are afraid to be flexible in deviating from the "rules", even at the request of the resident or family.<sup>25</sup> When goals collide, protecting safety normally overrides the autonomy of the resident.

A case recently decided by the Florida Supreme Court illustrates this point. In *Markowitz v Helen Homes of Kendall Corporation*<sup>26</sup> the defendant nursing home had a policy, respectful of resident autonomy, of permitting residents to take food from the main dining area to their individual rooms. A resident dropped a grape in one of the common areas in the facility and a visitor to another resident slipped on the grape, fell, and brought a personal injury lawsuit against the nursing home based on its autonomy enhancing policy. The court explicitly held that "the focus is on whether the practice of allowing residents to carry their food to their rooms constituted a negligent mode of operation. Based on the record in this case, there was a genuine issue of material fact that" should be left to the whims of a lay jury to decide. Regardless of the ultimate legal outcome of this case after trial and appeal (assuming it is not settled by the nursing home's insurance carrier out of anxiety about what unpredictable verdict a jury might reach), the practical result is inevitable—namely, nursing homes henceforth will be instructed by their risk managers to prohibit residents from removing food from the approved dining areas where constant staff monitoring of conditions occurs. Another element of resident choice, an important component of quality of life for many, will be sacrificed to maximize safety for the residents (and their visitors).

### POSITIVE INCENTIVES TO PROMOTE QUALITY

Despite the inconclusive evidence about its effectiveness,<sup>27</sup> presumably a continued regulatory presence that threatens adverse consequences serves a useful function in strengthening the safety related efforts of nursing homes, to the benefit of at least the safety interests of residents. But if the pursuit of quality of care and quality of life is to be taken seriously, a regime of negative command and control regulation supplemented by private malpractice litigation will be inadequate to the task. Positive incentives to supplement the regulatory "stick" and promote quality beyond just resident safety will be essential.

Such positive incentives may take a variety of forms.<sup>28</sup> Modifying the methodology through which Medicaid and Medicare payments to nursing homes are computed to reward facilities for performance in providing a high quality of care and of life for their residents, based in large part on realistic outcome measures, would be one very valuable "carrot" to encourage desired provider behavior.<sup>29 30</sup>

Facilitating the collection and dissemination of information to the public regarding the quality of care and quality of life found in specific nursing homes can empower potential residents and their families to wield meaningful clout in an increasingly competitive environment for institutional long term care consumers. Informed consumer choice, in turn, will compel nursing homes continuously to improve the quality of care and of life that they provide, in order to attract residents to fill beds and keep the facility financially viable.<sup>31</sup>

Nursing home personnel are well aware that long term care "shoppers" have ready access to a substantial amount of information about nursing homes competing for their business. For instance, the On-Line Survey and Certification Assessment Reporting (OSCAR) system is a computerized national database for maintaining and retrieving survey and certification data about nursing homes based on periodic state and federal Medicare and Medicaid certification inspections. "Nursing Home Compare" is another online federal government website that publicly disseminates information about conditions in individual nursing homes<sup>32</sup> based on the Nursing

Home Quality Initiative program of the Centers for Medicare and Medicaid Services (CMS). In May 2002 a new partnership was announced under which long term care ombudsmen will collaborate with quality improvement organizations of the CMS to respond more effectively to consumer inquiries and to educate consumers about new quality measures developed as part of the Nursing Home Quality Initiative program. Many states also place survey data about their own nursing homes on the internet for the public, as well having it available in print form for consumers to use in comparing facilities. In April 2002 the private National Quality Forum released a draft report, "Nursing Home Performance Measures," which identifies performance measures for nursing homes to facilitate the collection of uniform data that can be made publicly available to help consumers select a nursing home.<sup>33</sup> Consumer Reports publishes the "Nursing Home Detection Index" and the "Nursing Home Watch List by State".<sup>34</sup> The need to make its publicly available profile as appealing as possible and more appealing than that of its competitors plays on the enlightened self-interest of nursing homes.<sup>35</sup>

As a result of this self-interest, the nursing home industry has introduced its own quality improvement initiatives. For instance, the American Association of Homes and Services for the Aging (AAHSA) has launched a five year plan entitled "Quality First: A Covenant to Achieve Healthy, Affordable, and Ethical Long Term Care."<sup>36</sup> Wellspring Innovative Solutions, a private initiative developed by an alliance of 11 non-profit making Wisconsin nursing homes, has been widely praised for its approach to enhancing the well being of nursing home residents by improving the quality of care and reducing staff turnover.<sup>37</sup> The Eden Alternative<sup>38</sup> and the Pioneer Movement<sup>39</sup> are other similar initiatives based on the desire of nursing homes (often prodded by resident advocates) to provide better care environments.

One specific way in which the nursing home industry could improve quality of care and quality of life for residents would be to enhance the communication network between the resident, family, and staff. As the issue of rights and risks concerns all residents and their families, there is a need to develop philosophies of care in consultation with all of the affected stakeholders. Moreover, each facility's record keeping system should reflect the usual tripartite (resident, family, and nursing home staff) nature of decision making.

Voluntary self-initiated efforts aimed at changing the entire nursing home environment from the inside should be encouraged and supported as a supplement to regulatory strategies which concentrate on avoiding breaches of safety for residents. Indeed, "smart" regulations will work synergistically with industry efforts to facilitate a robust marketplace rather than replace it.<sup>40</sup>

Although the relationship between the amount of money spent by a nursing home and the quality of care and quality of life rendered to its residents is not direct,<sup>41</sup> insufficient resources certainly hamper the ability of facilities to produce the desired results. If society truly aspires to an improved quality of care and quality of life for nursing home residents rather than resigning itself to accepting the more limited goal of just keeping residents safe, more financial support must be forthcoming.

## CONCLUSIONS

Being kept physically safe, including safe from systemic errors which occur within the nursing home, is one important component of residents' lives. However, safety does not represent the entire expectations and preferences of residents concerning the quality of care and quality of life they hope to enjoy. To meet these expanded expectations and preferences will be a formidable task, calling for expansive thinking and ingenuity beyond simple compliance with the safety oriented boundaries established by command and control regulations. As one commentator has admonished:

## Implications for decision makers

- Since an important component of a successful strategy to address safety problems in nursing homes is to encourage nursing home personnel to be more forthcoming in reporting and disclosing errors, obstacles to success in this effort posed by the presently adversarial legal, economic, political, and media environment surrounding the nursing home industry must be remedied.
- In cultivating an environment that promotes quality of care and quality of life in nursing homes, maintaining resident safety is only a necessary, but far from sufficient, objective.
- When a nursing home's obligations to foster quality of care and quality of life are in tension with safety considerations, an appropriate compromise must be negotiated to balance those different values.
- Positive incentives or "carrots" must supplement the negative regulatory "stick" in order to promote quality in nursing homes beyond just resident safety.
- Regulations that work synergistically with the efforts of the nursing home industry to facilitate a robust marketplace with real consumer choice, rather than trying to replace or suffocate market forces, will contribute the most towards improved quality of care and quality of life for nursing home residents.

"In this era of finite resources for multiple needs, the solutions and the efforts for improving care in nursing homes need to be refocused. . . This new focus on providing quality care in nursing homes will require fundamental changes in the way nursing home care is provided. It requires loosening the regulatory reins that may stifle creativity and innovation. It also requires that many providers rid themselves of the habit of solving problems and seeking solutions within the context of the regulations."<sup>42</sup>

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