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ILLINOIS NURSING HOME REFORM: SORTING OUT THE DEADLY MIX

by SONIA PIACENZA

Under the Illinois Nursing Home Care Act, nursing home residents are guaranteed certain rights, including the freedom from abuse and neglect, while staying at a long-term care facility.¹ In reality, however, some Illinois nursing homes expose elderly residents to many dangers when they are in their most vulnerable state, times when most would expect a heightened level of care and peace.²

“There is an epidemic of sub-standard care in Illinois nursing homes,” said Steven M. Levin, senior partner at Chicago’s Levin & Perconti, who represents nursing home residents and their families in personal injury and wrongful death actions.³

Though the number of people residing in nursing homes has declined across the country, Illinois maintains a higher ratio of adults over 65 in nursing homes than the national average.⁴ Illinois, more than any other state, relies on nursing homes to house mentally ill patients, including people with criminal records who previously served time in jail, people who were living on the streets, and former patients of psychiatric wards.⁵ Often, these residents are housed alongside geriatric residents with very little monitoring, posing a very real threat to the vulnerable elderly population.⁶

“Felons are using nursing homes in Illinois as safe houses,” stated Illinois Attorney General Lisa Madigan while visiting a facility.⁷ After a Chicago Tribune investigation unearthed the realities of nursing home life, Madigan initiated Operation Guardian, a plan to conduct random and unannounced compliance checks at nursing homes.⁸ As of December 2010, the Operation Guardian initiative had conducted 23 compliance checks, resulting in 33 arrests.⁹

When the Chicago Tribune conducted its own investigation, called “Compromised Care”, it found that most sex offenders living in nursing homes were unregistered and many cases of assault and rape went unreported.¹⁰

The investigation also underscored the deeper issues of understaffing and inadequate training and reporting at Illinois nursing homes.¹¹ The newspaper described the fatal beating of a 72-year-old dementia patient by a convicted felon at the Columbus Park Nursing and Rehabilitation Center, illustrating the danger of placing helpless elderly patients near the potentially violent.¹² In this instance, the attacker had been imprisoned twice for felony convictions in Nebraska and Arkansas, but because Illinois law only required in-state background checks, the home did not know of these out-of-state convictions.¹³ Furthermore, the staff failed to monitor the attacker, even after frequent violent behavior, and failed to correctly report the incident.¹⁴

A similar situation occurred at the All Faith Pavilion nursing home on Chicago’s South Side when a 77-year-old man who had been rendered helpless by a stroke was fatally beaten over the head with a clock radio by a 50-year-old man who suffered fits of delirium.¹⁵ The man had had a history of negative and aggressive behavior, but the nursing home still placed the two men in the same room.¹⁶

“What’s wrong is that nobody was watching,” said Tribune reporter David Jackson, who spent up to a year investigating and reporting on incidences like these.¹⁷ “They say they are watching, but it costs money to do that. These nursing homes are basically warehouses for the mentally ill that fail to provide proper treatment and then house them next to very vulnerable people.”¹⁸

Despite the shocking stories of neglect and violence that occur in these facilities, the nursing home operators maintain that they have kept incidents to a minimum.¹⁹ With limited resources and such a large demand for care, the operators argue, they are unable to do more.²⁰ They claim that they offer a public service by taking in the destitute population and at the same time face the demands of government inspectors.²¹

Beginning in the 1960s, Illinois began releasing thousands of people with mental illnesses from psychiatric institutions in an effort to de-institutionalize those in need of care.²² However, the state did not provide adequate programs for these displaced people, and many of them ended up in nursing homes alongside elderly residents.²³

“Illinois is really unique in its blurring of long-term care and mental health resources,” said Harvard Medical School associate professor David Grabowski.²⁴ “Many of these patients were not appropriate for placement in a nursing home—yet Illinois didn’t have an alternative place for them.”²⁵

In 2010, a class action lawsuit was filed on behalf of mentally ill patients housed in nursing homes and institutions for mental diseases who could be living in the community.²⁶ The case was settled, with the state pledging to offer community-based housing for those patients who wanted it and were capable of leaving the homes.²⁷ Illinois still faces the challenge of properly segregating elderly patients from others, as well as finding the correct placement for the mentally ill.²⁸

In July 2010, Governor Pat Quinn signed the Nursing Home Safety Reform Bill into law.²⁹ The law demands stricter background checks and psychological screenings of incoming nursing home residents, as well as requiring nursing homes to increase staffing levels.³⁰ Nursing homes that do admit mentally ill or potentially dangerous patients are required to pass more stringent safety standards.³¹ Finally, the facilities will be subject to extensive rules and guidelines, including licensing fees and nursing staff levels.³² By July 2011, the state must

phase in 71 new nursing home inspectors to make sure nursing homes follow the new protocol.³³

Notwithstanding the new laws in place, Illinois has a long way to go in improving its long-term care system, especially because the current budget crisis may limit the ability to properly address the problem.³⁴ A new bill passed in early 2011 will increase the tax per bed levied on nursing homes, which may help fund the new safety reforms without worsening the deficit.³⁵ The money will enable homes to increase staffing, hire more inspectors, and finance other reforms.³⁶

For attorney Steven Levin and his clients, Illinois' push for reform signals that there is still more to be done.³⁷ According to him, the new law failed to address important issues such as nursing home liability insurance and proper remedies for injured residents.³⁸ He points to nursing homes' complex corporate structures and failure to carry liability insurance as ways of avoiding accountability for their wrongdoings.³⁹ Ultimately, "if we want to see better care," he warns, "we must push for further legislation."⁴⁰

NOTES

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3 E-mail Interview with Steven M. Levin, Senior Partner, Levin & Perconti (Mar. 25, 2011).

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5 David Jackson & Gary Marx, *Nursing Home Safety: Gov. Pat Quinn Forms Task Force*, CHI. TRIB., Oct. 2, 2009, available at www.chicagotribune.com/news/chi-nursing-task-force-02-oct02,0,3352814.story.

6 *Id.*

7 David Jackson, *Nursing Home Sweeps Find Residents with Arrest Warrants*, CHI. TRIB., Sep. 20, 2010, available at www.chicagotribune.com/health/ct-met-nursing-hom-madigan-20100920,0,2114501.story.

8 *Id.*

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10 David Jackson & Gary Marx, *Compromised Care: West Side Nursing Home Probed After Death*, CHI. TRIB., Nov. 13, 2009, *available at* www.chicagotribune.com/news/watchdog/nursinghomes/chi-nursing_home_deathnov13,0,05034118.story

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 Jackson & Marx, *supra* note 2.

16 *Id.*

17 Telephone Interview with David Jackson, Reporter, Chi. Tribune (Mar. 24, 2011).

18 *Id.*

19 Jackson & Marx, *supra* note 2.

20 *Id.*

21 *Id.*

22 Mary Susan Littlepage, *Advocates for the Mentally Ill Criticize Illinois Nursing Homes, Housing Options*, TRUTHOUT (Nov. 13, 2009), *available at* <http://www.mylittlepages.com/nursinghome.html>.

23 *Id.*

24 Jackson & Marx, *supra* note 2.

25 *Id.*

26 *Williams v. Quinn*, No. 05 C 4673, 2010 WL 3894350, at 3 (N.D. Ill. Sep. 29, 2010).

27 *Id.*

28 Jackson & Marx, *supra* note 5.

29 David Jackson & Gary Marx, *Quinn Signs New Nursing Home Safety Bill*, CHI. TRIB., July 29, 2010, *available at* www.chicagotribune.com/health/ct-met-nursing-home-bill-signing-20100729,0,2150131.story.

30 David Jackson & Gary Marx, *Sweeping Changes for Nursing Homes*, CHI. TRIB., May 9, 2010, *available at* www.chicagotribune.com/news/watchdog/chi-nursing-home-bill-passed,0,1392856.story.

31 *Id.*

32 Jackson & Marx, *supra* note 29.

33 *Id.*

34 David Jackson & Gary Marx, *Legislature OK's Tax Hike to Fund Nursing Home Safety*, CHI. TRIB., Jan. 12, 2011, *available at* www.chicagotribune.com/health/et-met-nursing-home-bill-20110112,0,1425730.story.

35 *Id.*

36 *Id.*

37 E-mail Interview with Steven M. Levin, *supra* note 3.

38 *Id.*

39 *Id.*

40 *Id.*