



D6 The Investigation of Abuse in Nursing Homes

Betty L. James, RN, BSN, MA*, 6822 West St. Joseph Highway, Lansing, MI 48917

The goal of this presentation is to inform forensic scientists about abuse of residents in nursing homes by facility staff and how one state is trying to solve the problem. The presentation will impact the forensic science community and the public by examining the failure of present statutes and laws, which need to be enacted to protect the vulnerable nursing home residents from an abusive staff.

Who is protecting your loved one who resides in a nursing home? Who guards her against having her precious diamond engagement and wedding rings stolen from her finger as she sleeps? What is being done to protect her from being sexually assaulted, if she lies unconscious? Who prevents the diversion of medications meant to alleviate her pain and suffering by a thief who cares only about his own addiction? What is done to protect her from physical, psychological, or sexual abuse? Part of the solution to the above problems is to enact federal and state legislation and then enforce that legislation.

In 1990 the federal government developed a Resident's Bill of Rights. This included 37 rights to which the individual is entitled, while a resident in the nursing home. The Federal government included specific directions to the states requiring all nursing homes participating in Medicare/Medicaid to educate the resident, families and public about The Resident's Bill Of Rights. Additionally the facilities were required to provide each resident entering a nursing home a copy of the Resident's Bill of Rights and explain it in language that easily understood.

Federal Medicare/Medicaid laws, Michigan Public Health Code and Michigan Nursing Home Regulations regulate the State of Michigan nursing homes. All states have similar legislative acts.

The Federal Medicare/Medicaid regulations require an annual survey be conducted on all certified nursing homes. A team of surveyors including registered nurses, dietitians, sanitarians, and social workers spend four to five days in each facility completing seven tasks that the federal government outlined for the annual survey. In the State of Michigan, for example, federally certified surveyors from the Michigan Department of Community Health complete the surveys and investigation of complaints.

The Michigan Legislature was concerned about the number of validated complaints and convictions that the Attorney General's office processed against nursing home's staff. The legislature, in conjunction with the representatives from the public and nursing home provider groups, studied the conditions in the nursing homes to determine why there were so many complaints filed against the facilities concerning resident care. Following the study, the legislature enacted Public Act 303, in 2002.

Michigan's Public Act 303 of Public Acts of 2002 (revised 12/15/03) was enacted to protect a vulnerable population. A person is defined as vulnerable when he or she is age 18 or over who, because of age developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal social skills to live independently on his/her own.

This statute became effective on May 10, 2002 and required nursing homes, county medical care facilities, and homes for the aged to have a criminal background check on all employees hired after the above date. The new law allowed for three types of criminal background checks that are acceptable depending on the situation. These checks are (1) applicants who have already had a recent Michigan State Police (MSP) check. (2) Applicants who have resided in Michigan for over three years, and (3) those applicants who have not resided in the state for three years.

In early 2005 the Office of the Attorney General conducted a study of the effectiveness or ineffectiveness of the statute. The total population of 40,490 certified nursing assistants was identified statewide. The total nurse aide population in the study area were 5,533, 14% of the states nurse aide population. The areas studied contained 50 nursing homes, approximately 12% of the states 472 nursing homes.

A complete criminal history was obtained for all nurse aides within the geographic area. The checks included convictions, outstanding warrants, confirmed protection orders, and the mental health incompetence/commitment orders. The study included the criminal history data only of nurse aide employees, if complete information was available.

The study revealed that certified nurse aides had a total of 1,218 outstanding warrants that if convicted of the offenses could preclude them from working in a nursing home. Excerpts of the study will be presented during the presentation, which will indicate that the present system of checking the backgrounds of certified nursing assistance is not acceptable.

Nursing Home, Abuse, Elder