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How many?

Nursing homes: 16,300 caring for 1.45 million



Assisted living: 20,000-36,000 caring for 1 million or more

Population Trends

- **12% increase of persons 65 yrs or older between 1990 and 2000**
- **Approximately 35 million people 65 years of age or older in 2000**



38% increase of persons 85 yrs or older, between 1990 and 2000

- Source: US Census Bureau, 2000

Factors Contributing to the Growing Popularity of Assisted Living Facilities

- Aging of elderly population in America
- Need of assistance with activities of daily living for elderly
- Continued increase in elderly living alone



Factors Contributing to the Growing Popularity of Assisted Living Facilities

- Divorce
- Role of women in the work force
- Increased net worth of the elderly



Statutory and Regulatory Protections of Residents

- No federal statutes or regulations that apply to assisted living facilities
- Look to individual state's statutes or regulations – can be found www.ncal.org
- If no state statutes or regulations, look to common law standard of care



Joint Commission

- **Conduct surveys and on-site inspections**
- **Quality Check allows anyone to search for accredited organizations with a city, state or by type of setting - can be found at www.jcaho.com**



Joint Commission con't

- **Good news: JJC began accrediting assisted living facilities for 3 year terms**
- **Bad news: JJC has discontinued accrediting assisted living facilities as of January 1, 2006**



Joint Commission con't

- However, those facilities accredited prior to January 1, 2006, keep accreditation
- You should investigate whether facility was accredited

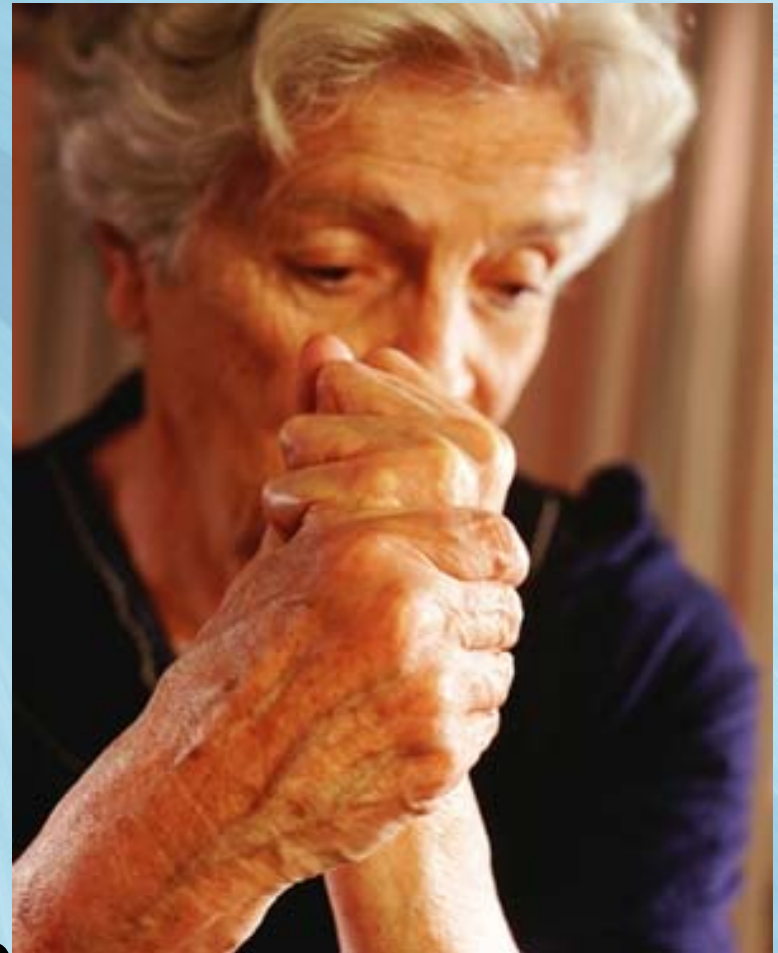


Joint Commission
an Accreditation of Healthcare Organizations
Setting the Standard for Quality in Health Care

Assisted living versus NH

**Assisted living
provider
has full freedom to
provide extensive,
individualized
services... or not**

**Names and definitions
of assisted living
vary from state to state**



Assisted living by any other name:

Residential care facility: Indiana, Missouri

Personal care home: Georgia

Adult residential care: Louisiana

Home for the aged: Michigan

Residential facility for groups: Nevada

Boarding home: Washington

Who are the residents?



Who are the residents?

33% to 68% have dementia

Should be able to walk (23 states)

Should be able to get out of bed without help

Should not be a danger to others



Buyer beware

- Owner can force out residents who are undesirable

Facilities often fail to measure up to lofty ideals of privacy, dignity, and safety



Why you should hire a Legal Nurse Consultant

- **Why an attorney needs a legal nurse consultant to know the law**
 - Know standard of care
 - Know records required



Attorney's Perspective of the Role of a Legal Nurse Consultant

- Know the staffing requirements**
- Know admission/discharge criteria**
- Ability to cite rules, regulations and statutes in your expert opinion**
- Organize the records**
- AALNC.ORG**



Washington State's Boarding Home Licensing Rules

- **Basic objectives:**
 - Define boarding home
 - Require licensure of these facilities
 - Provide for minimum requirements such as Care plans, Requirements for Policies and procedures, Residency Agreements, and disclosure of information to residents
 - Investigation of reports of abuse, neglect etc.
- **Codified: WAC Title 388 Section 388-78A-2100**

Resident Characteristics

WAC 388-78a-2050

- A boarding home may admit and retain an individual as a resident in a boarding home only if:
- The boarding home can safely and appropriately serve the individual with appropriate available staff providing:
 - RESIDENT IS AMBULATORY
 - DOES NOT REQUIRE FREQUENT PRESENCE OF A NURSE WITH EXCEPTIONS

GET THE RECORDS

- WAC 388-78A-2430
 - MUST MAKE RECORDS AVAILABLE WITHIN 24 HOURS OF REQUEST PURSUANT TO 70.129.030
 - MAKE COPIES AVAILABLE WITH 48 HOURS
 - CANNOT CHARGE MORE THAN 25 CENTS A PAGE

OTHER PROVISIONS

- 388-78A-2732 MUST MAINTAIN LIABILITY INSURANCE
- 388-78A-2600- MUST MAINTAIN POLICIES AND PROCEDURES
- 388-78A-2630 RESIDENTS RIGHTS
 - HAVE CLIENTS CALL HOTLINE
 - INVESTIGATE COMPLAINT
 - ISSUE A REPORT

Common Law Standard of Care

- Many standards of care likely in an assisted living facility case
 - Physician
 - Nurse
 - CNA
- Look to licensing requirements



Typical Assisted Living Facility Case Allegations

- Elopement
- Falls
- Wound Care
- Medication Errors
- Sexual Assault
- Failure to Supervise



Elopement



Elopement

- **Elopement v. Wandering**
 - Elopement – resident is seeking an exit from the facility
 - Wandering – resident enters or leaves an area without permission
- **Likely to see wandering behavior before elopement occurred**
- **Common defense is that residents have the right to come and go as they please**

REGULATIONS

- DEMENTIA SEE WAC 388-78A-2370
- ELOPEMENT SEE WAC - 78A-2390

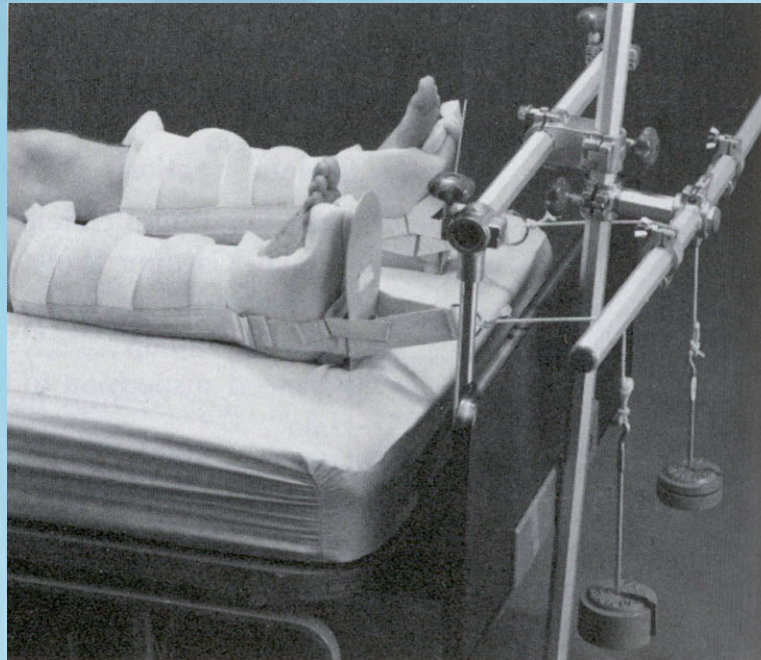
FAILURE TO DISCHARGE

- WAC 388-78A-2100
- FULL ASSESSMENT ANNUALLY
- CONSISTENT WITH RESIDENT
CHANGE CONDITION AS SPECIFIED IN
388-78A-2120

Elopement Case Example

- **Resident diagnosed with dementia**
- **History of wandering through the facility**
- **Previous attempt to elope from facility at 3:00am and stopped by security**
- **Elopes from facility in winter and dies from exposure to the elements**
- **Facility did not know she was missing for over 4 hours**
- **Facility claims it was simply a landlord**

Falls



Falls

- **Increasingly common**
- **Need for assistance in ambulating increases over time but may not be recognized by facility**
 - **Was a higher level of care needed**
 - **Should the resident have been discharged to another facility**
 - **Assessment, care plan, implementation of care plan**

Fall Case Example

- New York case that my office is handling
- 88 year old male with Alzheimer's from home to ALF to hospital to ALF
- Once at 2nd ALF, falls several times, suffers subdural hematoma and dies
- Hospital records indicate resident had increased confusion, high risk for falls, and recommended that resident go to a nursing home
- Issue: appropriateness of admission to 2nd ALF instead of nursing home

Fall Case Example con't

- **Medical records reflect that family was ok with transfer to 2nd ALF**
- **As a LNC, important to point out to attorney that this is a possible defense**
- **Response to the defense is that family relied on the professionals**

Pressure sores



Wound Care

- **Bedsore are less common in assisted living facilities but may increase as more people enter assisted living facilities**
- **Typical theory is resident was not suitable for an assisted living facility**
- **Inability to ambulate significantly increases risk of bedsores**
- **Review the home health care agency records and consider naming the agency as a defendant**

Wound Care Case Example

- **Quadriplegic man in assisted living facility redevelops severe bed sores**
- **Speculating that facility did not have adequate staffing to turn and reposition as necessary**
- **If home health care agency was treating him, may want to name the agency as a defendant**
- **Verdict of \$2 million, reduced to \$500,000**

Medication Errors



Medication Errors

- **Over- or under-medication**
- **Improperly labeling medications**
- **Failing to properly train staff to dispense medications**
- **Failing to have prescriptions refilled on time**
- **Failing to ensure residents were taking the medication as prescribed**
- **Common defense that the resident refused the medication**
 - **Standard of care requires that ALF inform resident risks of refusal, creative ways to convince resident to take medications, or contact resident's physician**

Example Medication Error Case

- **43 year old male resident attempts suicide**
- **Failed to give the resident a prescribed psychiatric medication**
- **Resident gains access to roof and jumps, sustained bilateral fractured tibias and fibulas and a fractured hip**
- **Defendant claimed resident refused medication**
- **Verdict of \$1.5 million with defendant held 70% responsible**

MEDICATION ERROR CONT

- WAC 388-78A-2230
 - RESPECT RIGHT TO REFUSE
 - DOCUMENT DATE, TIME AND MEDICATION
 - NOTIFY PHYSICIAN
 - CONDUCT AN EVALUATION

Sexual Assault



Sexual Assault

- **Liability typically established either by:**
 - **Admission and retention standards of the facility**
 - **Admission of sexual offenders to the facility**
 - **Inadequate staffing**
 - **Inadequate background checks of staff**
 - **Failure to supervise both residents and staff**

Criminal Checks RCW

74.39A.055

- All long term care workers hired after January 2014 must be screened through state and federal backgrounds checks in a uniform and timely manner...
- WAC 388-78A-2461- Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home

Failure to Supervise



Case Examples

- Residents have been left to fend for themselves because there were no caregivers on site
- Arizona facility fined \$3,000 for inadequate staffing when unconscious resident left in hot sun resulting in death from heat exposure
- Florida assisted living facility resident left choking because employee on duty not trained in basic CPR.

Theories of Liability

- **Common law negligence**
- **Statutory violations**
- **Wrongful death**
- **Consumer fraud**
- **Breach of contract**
- **Premises liability**



Common Law Negligence

- What is common law?
- Asserted in almost every case. For example:
 - Duty: nurse has duty to assess residents properly
 - Breach: if nurse fails to properly assess, nurse has breached duty to that resident



Common Law Negligence

- Proximate cause:
was improper
assessment the
cause of the
resident's injury –
i.e. assessed as low
risk of falls but later
falls
- Damages: resident
must suffer damages
as result of breach
- Cite any common law
standard of care that
facility



Statutory Violations

- This will depend on the jurisdiction
- If jurisdiction has statutory protections for residents, cite each statute the facility violated in your report
- If no statutory regulation of facility, look for intentional torts such as assault or battery



Wrongful Death

- **Must causally relate the death to the actions or inactions of the facility**
- **Damages may be limited to economic loss only**
- **Look for dependants of the resident or any lost income**
- **Loss of services**



Consumer Fraud

- **Depends on jurisdiction**
- **Advertisements such as 24-hour staffing may lead to family not moving a resident to a nursing home when the resident begins to show risk for elopement**



Consumer Fraud

- Review any advertisements and compare the services the facility claims to provide with those services that were actually provided
 - ** offers a unique package that combines the **highest quality accommodations, services, and personal assistance** in a manner designed to promote independent living for seniors.

Breach of Contract

- Residents typically sign contracts or leases upon admission to assisted living facilities



- Look to see if the facility claimed in the contract to provide a service for a fee and the resident was charged that fee but never received the service

Premises Liability

- **Common defense in assisted living facility cases is that the facility was simply a landlord**
- **Premises liability claims are applicable even in landlord situations**



Premises Liability

- If resident injured in common area of the facility, look to possible premises liability claim



National Citizen's Coalition for Nursing Home Reform

- **Mission is to define and advocate for quality care in nursing homes and other long term care facilities**
- **To ensure that people who live there are treated with humanity and care despite their age, disability, and poverty level**
- **To be the voice of the residents in the public policy debates**
- **<http://www.nccnhr.org/>**

The End

