Assisted Living vs. Nursing Home Care: The Differences and Cases Each Might Present

As pointed out in our last blog post, the American population is aging, and hospitals aren't the only facilities struggling to accommodate these changes. Approximately one million Americans live in some type of senior living community, with that number predicted to double by the year 2030.[1] However, these communities present a range of differences in terms of what they offer residents, and it is especially important to break down the differences between assisted living and nursing home care. While many existing articles lay out the differences between these two types of retired living environments, this article intends to instead provide information of primary importance to legal specialists who might be facing claims related to one or both facilities. Here's what you should know:

[1] "Assisted Living Statistics – A Deeper Dive into the Demographics," *American Senior Communities*, Feb. 23, 2016, http://www.ascseniorcare.com/assisted-living-statistics-a-deeper-dive-into-the-demographics/

Nursing Homes

Nursing homes, like assisted living centers, provide housing for senior citizens, but they are also skilled medical facilities. Whether an individual's stay in a nursing home is for the short or long term, it is intended for those patients requiring around-the-clock care for chronic medical conditions, severe pain, serious injuries, or permanent disabilities. Skilled nursing facilities house patients with greater and more frequent needs and are highly regulated, licensed, and inspected by both state and federal agencies.

Staffing Requirements:
Unfortunately for our aging population, nursing homes are only required to staff to the abysmal federal minimum standard. Federal law requires Medicare and Medicaid certified nursing homes to have a registered nurse (RN) on duty at least 8 hours a day (this can include the DON who does no direct care), 7 days a week; and a licensed nurse (RN or LPN) on duty 24 hours a day. However, there are no minimum staffing levels for nurse's aides, who provide most of the day-to-day care.

Each state has its own additions to this minimum standard. For example Oregon also requires 1 DON RN, 1 RN/LPN Charge Nurse 24 hours a day, 7 days a week including 1 RN Charge Nurse in house 8 consecutive hours (7am -11pm). For 1-60 residents: DON may also be the Charge Nurse with no less than 1 RN hour per resident per week. For 41+ beds: exclude the hours of RN administrator. Oregon also states, "Sufficient staff to provide care to achieve the highest degree of function.

As is seen, this is not a great deal of skilled nursing personnel. To get around the cost of providing care by an RN, most facilities staff predominately LPN's working under delegation from an RN with most care being performed by CNA's who generally have less than 6 months of formal training.

Legal Concerns:
Nursing homes are generally run with the minimum staff required to meet state and federal standards. They are not staffed to easily care for the acuity of the patients, which results in neglect and abuse. Sadly, in most cases, no one ever finds out. Many elderly find themselves without close family to advocate for them and even when there is a family, most family member have no idea their loved one is not receiving appropriate care.

For example, many simple pressure ulcer cases turn out to be abuse and neglect where the patient was left for hours on a bedpan causing significant injury. Family members are told that because the loved one is immobile or refuses to be turned, a pressure ulcer was unavoidable and not told the truth of, "we forgot the patient."

With the sheer number of patients, administering medications is generally done by "rote." Appropriate medication administration requires the person giving the medication to understand what the medication does, why it is prescribed, side effects and expected dosages. Also included in this is whether or not the medication is expired. However, there are so many patients and so few staff that many times a medication is given without regard to any assessment. Blood pressure medications might be given without taking blood pressure first, insulin is given without checking a blood glucose reading, etc. Staff also might "pre-document" medication administration sheets for days in advance leaving the reviewer with only symptoms and results to determine whether a medication was actually given.

Again, with the sheer number of patients, nursing assessments which should be performed every shift and on change of condition, are rarely done and even more rarely documented. This leads to delays in care when a patient's condition changes. Frequently delays are found that entail days not hours without nursing intervention or care.

The high population inside the nursing home combined with the bare minimum staff is a recipe for significant neglect and abuse.

Assisted Living Centers

Assisted living centers are intended for elderly residents who might need minimal to moderate help with daily living activities, like bathing, dressing, eating, transportation, and taking medicine, but don't need constant supervision or skilled nursing care. Unlike nursing homes, most assisted living centers don't receive federal funding to pay for residents' care, and are regulated by the state.

Most caregivers in assisted living centers are unskilled caregivers. Qualifications include a CPR card and a few state mandated classes. Beyond this, there is no licensure qualifications needed to be employed. While some states mandate pre-employment checks, generally it is wholly up to the employer to require criminal background checks, credit checks, and previous employment history.

These untrained caregivers are allowed to provide medication and other "medical" assistance based on nurse delegation rules found in the individual state nursing practice act. It is wholly up to the assisted living center or the family to decide when and if the resident requires too much care for their facility.

Staffing Requirements:
As these facilities are not federally overseen, all staffing requirements come directly from the state. For example, in Oregon, there are no stated minimum staff requirements. Instead Oregon says "Facilities must have qualified awake direct care staff, sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident. Direct care staff provide services for

residents that include assistance with activities of daily living, medication administration, resident-focused activities, supervision, and support" and "The Department retains the right to require minimum staffing standards based on acuity, complaint investigation or survey inspection."

Legal Concerns

Assisted living facilities are often seen as more independent than nursing homes, however the name and connotation causes many to overlook the potential faults of these institutions. Assisted living centers are not subject to the same strict regulations and rigorous annual inspections as nursing homes, and are therefore less likely to respond appropriately to complaints of elder abuse, medication error, fraud, and neglect.

Assisted living facilities generally use an in-house RN/LPN or a contract RN as the "delegating" nurse with all other caregivers being unskilled. This nurse delegates all "nursing" level care to untrained staff. This is allowed under most state nursing practice acts. The RN takes on the responsibility of delegation, but how often that care is reviewed by the RN is wholly up to the facility.

One of the most difficult issues is determination of care. Assisted living facilities must determine whether a resident has exceeded what care they are able to provide and "discharge" the resident if they cannot provide the appropriate care. However, because all "skilled" care is wholly provided by outside agencies, assisted living facilities can and do keep medically fragile and bed/chair-bound residents who should be in a fully skilled nursing facility. When a resident becomes less independent and more medically fragile, the decision to whether a resident stays or not falls to either the facility, which has a financial interest in keeping the resident; a home health care agency, which has a financial interest in keeping the resident; the primary care physician who generally is completely unaware of any issues, and/or to the untrained family member if there are any.

Unskilled caregivers are not required to document as skilled nursing professionals are required to do as is evidenced by the generally poor care documentation. This leaves a reviewer with significant questions as to what care was actually provided when reviewing the record. This requires a substantial amount of care information to be acquired during deposition and the facility faces an uphill battle in substantiating the care that was allegedly given and paid for.

Bringing claims of abuse and neglect in this environment can be a challenge as generally a significant event has to occur before any family or advocates realize there is an issue and there is little meaningful caregiver documentation to review. In many cases a solid medical knowledge of causation is required to work backwards from the end issue to what actually occurred. Because these facilities are not inspected as a nursing home is, finding out if a facility has previous claims of abuse and neglect can be a challenge.

Summary

Recognizing what sorts of care facilities best fit the needs of the elderly patient is crucial, and so is recognizing which care facilities are run ethically, safely, and within expected standards of care.

The potential negligence cases for both assisted living and nursing homes can include medication errors, falls, skin breakdown, delay in care, failure to deliver ordered treatment and elopement. As legal nurses, we provide the chart review and analysis to determine if the facility followed medical orders and if the care was considered safe and followed best practice. Of additional concern is if the client was cared for appropriately in the best setting for their overall medical needs.

At Integrity Legal Nurse Consulting PDX, we have experience in both assisted living and LTC/NH cases, providing the necessary chart review and analysis. In addition, we are able to provide testifying expert work for these cases as well. Please call and find out how we can assist you and your practice to a more successful litigation.