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LAW CENTER HELPS ON 20 LTC PROBLEMS

By EDWARD KING
and ERIC CARLSON

Many nursing homes follow standard operating procedures that violate the federal Nursing Home Reform Law of 1987. Many of these unlawful practices—and suggested solutions to them—are discussed in the new guide titled *20 Common Nursing Home Problems—and How to Resolve Them*, which we developed and published at the National Senior Citizens Law Center (NSCLC), Washington, D.C., for consumers and professionals.

Some readers might initially question whether unlawful nursing home practices could truly be so common. Nursing home operators frequently claim that they work in the most regulated industry outside of nuclear power. At first glance, it is difficult to reconcile the claims of a heavily regulated industry with the reality of common nursing home violations. Much of this confusion results from consumers' lack of familiarity with nursing home law. Compounding this confusion are the undeniably difficult circumstances that surround many nursing home admissions.

For instance, when a patient needs a bed at a local nursing facility following a stroke and subsequent hospitalization, neither the patient nor the patient's family is likely to have the knowledge or inclination to examine the facility's nursing home agreement closely or to combat the nursing home's unlawful practices. Nursing homes are in the position of power in such cases, and some use it to develop and maintain illegal practices. Following are some examples cited in *20 Common Nursing Home Problems*.

Visiting hours are among the most routine realities of nursing homes. Facilities commonly allow visitors only during a specified period from late morning through early evening, even though the Nursing Home Reform Law gives a resident the right to receive visits from a family member at any hour, day or night.

Discrimination against Medicaid-eligible residents is rampant. As a resident's reimbursement source changes from Medicare to Medicaid, the person's therapy services frequently are discontinued without any medical justification. More generally, Medicaid-eligible residents are given the impression that they are unprofitable for the nursing home and thus will receive only a bare minimum of services. Such discrimination is explicitly barred. No nursing home is required to participate in the federal-state program. Those that do apply for and receive Medicaid certification agree, as a condition of participation, to treat Medicaid-eligible residents equally. It is unlawful and unethical for a nursing home to seek Medicaid certification and receive payment from the program for service while shortchanging Medicaid-eligible residents.

Discontinuing Medicare-funded therapy, based on the claim that the resident has "plateaued," is another common problem. The new NSCLC guide emphasizes that Medicare regulations recognize that therapy can be reimbursed under the program's Part A, covering hospital and related services even in the absence of a patient's current progress, as long as either future progress is foreseeable or the therapy is necessary to maintain a resident's condition. In any case, medical decisions shouldn't be driven by reimbursement concerns; if therapy is medically advisable, it should be provided regardless of the resident's reimbursement source.

Failure to meet residents' preferences is an additional frequent violation of the law. Residents com-

monly feel that their lives are not their own. For example, they are forced to wake up and go to bed at specified times, and their schedules and menus are dictated by facility management. The Nursing Home Reform Law, however, requires every facility to make reasonable accommodations to meet a resident's preferences in schedules, meals, activities and other facets of day-to-day life.

Fortunately, management at an increasing number of better nursing homes is embracing the movement to change the culture—not only the health and reimbursement practices but also the very atmosphere of homes—and these facilities are giving more control over daily nursing home operations to the residents and the caregiving staff. But until culture change becomes the rule, not the exception, residents, their families and caring professionals in aging should be aware of what the law requires—or does not.

Besides listing frequent concerns, *20 Common Problems* notes solutions. A key to improving nursing home care is increasing the knowledge and the expectations of facility residents and their families. Average consumers know much more about cars (or apartments, or cell phones) than about the places where they or their loved ones might well reside for an extended and challenging period of their lives. This lack of knowledge allows many nursing homes to whittle back on services and make decisions with insufficient regard as to what residents and their families would prefer.

We developed the 40-page booklet *20 Common Problems* to underscore that residents and families know too little and put up with too much. Too many fear making complaints and accept standard operating procedures as beyond challenge. Nursing homes are paid thousands of dollars monthly per person, but residents and family members often are apologetic when requesting some measure of individualized attention. If culture change in nursing homes is to be widespread and lasting, the pull of enlightened nursing home management must be teamed with the push of consumer expectations and demands.

The new NSCLC guide aims to show that professionals in aging can play an important role in educating consumers and encouraging increased expectations. The federal nursing home law is a good place to start; it applies to every resident in any nursing home that is certified to accept reimbursement from Medicare, Medicaid or both. As discussed in more detail in *20 Common Nursing Home Problems*, the law addresses virtually every aspect of nursing home care, including such matters as restraints, medications, feeding tubes, admissions, readmissions from hospitals, and evictions. In short, nursing homes already are obligated by law to provide resident-centered care. At its core, the reform law, a remarkable document, was written and approved by Congress to give residents control and choices.

The culture change movement in long-term care is a valuable step in the right direction. *20 Common Nursing Home Problems* aims to support an equally important additional step: activating, cultivating and educating a consumer base that understands nursing home care and will not accept second-class treatment. ♦

Edward King is executive director of the National Senior Citizens Law Center, where Eric Carlson, author of 20 Common Nursing Home Problems—and How to Resolve Them, is an attorney specializing in long-term care. The guide can be purchased at www.nslc.org, or by calling (202) 289-6976, ext. 201.