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Thinking about the unthinkable: Staff sexual abuse of residents

Although few staff members ever cross the line, those who do grab headlines, cost facilities millions, and destroy seniors' golden years

Staff sexual abuse of residents is a topic you don't hear much about—except when it happens. Such allegations are fodder for local TV news stories and newspaper headlines, and often all nursing homes end up being viewed with an outraged glare. The cases are indeed disturbing; for example, 23-year-old Michael Scott Simons, a former Corvallis, Oregon, Alzheimer's care facility worker, admitted to police that he had fondled the breasts and genitals of three patients, along with having oral sex and sexual intercourse with one woman.[1] Such incidents in nursing homes and other LTC facilities are, thankfully, uncommon, but when staff members sexually assault residents, lives are destroyed, facilities' reputations go out the window, and costly lawsuits are certain.

Managers of LTC facilities should not feel that this is a problem they alone face. "Historically, virtually all institutional environments had incidents of sexual abuse," says David A. D'Amora, MS, LPC, CFC, director of the Center for the Treatment of Problem Sexual Behavior in Middletown, Connecticut, and a board member of the Association for the Treatment of Sexual Abusers. D'Amora explains that institutional settings ranging from psychiatric institutions to group homes for those with mental retardation share characteristics that can increase the possibility of sexual abuse:

- a highly vulnerable population whose members often lack the ability to give consent or defend themselves
- a homogenization or "facelessness" of the population receiving care
- patient needs that require close contact with caregivers (e.g., toileting and bathing)

Although an abuser's behavior might be limited only to one institutional setting, D'Amora says that an abuser often is found to have exhibited similar behavior in other such settings.

Not all sexual abusers have the same motivation, either. D'Amora points out that many of the incidents in institutional settings are acts of molestation, such as inappropriate touching or fondling, which are not done, he says, with a threat of violence or physical hurt: "They are not thinking of the victims or of hurting them," he explains. "Molestation is a selfish way of getting one's own needs met, and there often isn't an intent to hurt. It's not an issue of being cruel. It's just really inappropriate, bad behavior that is ultimately hurtful." Abusers rationalize that victims wouldn't understand what was going on or would be unable to notify someone of what happened because of their cognitive state.

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But some abusers truly *do* intend to hurt their victims, and they are fascinated by the power they have to do this. The sexual component becomes secondary, notes D'Amora; it becomes a way of showing power and control (as with the motives behind rape). In fact, D'Amora says the power dynamic behind sexual abuse in institutions is similar to the one behind some U.S. soldiers' infamous sexual humiliation of prisoners in Iraq's Abu Ghraib prison.

Of course, preventing sexual abuse in the first place is the goal. Genevieve Gipson, RN, MEd, RNC, director of the National Network of Career Nursing Assistants (**www.cna-network.org**), believes a comprehensive approach can help administrators stop most sexual abuse before it happens. Start with criminal background checks of prospective employees, Gipson advises: "A person who has been convicted of sexual abuse should not be hired in a nursing home."

"Done right," says Stefan Keller, president of Certiphi Screening, "background checks can be extremely effective in helping to prevent the hiring of an individual with a history of sexually abusing patients. Since the best predictor of future behavior is past behavior, individuals with histories of sexual abuse pose a definite risk to long-term care facilities. There are countless stories in the media of healthcare employees who commit criminal misconduct on the job, and then are found, through a background check run after the fact, to have convictions for similar crimes in their history." Keller suggests that a basic background check program include the following:

- identity verification (e.g., Social Security number verification)
- countywide (e.g., at the county courthouse) or statewide criminal checks (e.g., at state repositories, including state police)
- employment verification
- education verification
- professional license/credential verification, if applicable
- sex offender registry checks (e.g., through state repositories)
- child or elder abuse registry checks (e.g., through state repositories that collect such information)

- nurse aide abuse registry checks
- checks of additional healthcare databases of "sanctioned" individuals, including the U.S. Department of Health and Human Services' Office of Inspector General (OIG) List of Excluded Individuals/Entities (**http://exclusions.oig.hhs.gov/search.html**), as well as the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank (**www.npdb-hipdb.com**)
- drug screening

Keller notes that "It's imperative to consistently run the same level of checks on all employees, consistent with the duties that employees will be performing. This practice not only protects the legality of a facility's background check process, but also may reveal individuals with past problems in one type of job who are applying for another type of job. For instance, a nurse aide with a history of abuse may apply for a job at a long-term care facility as an office manager or food service worker."

Keller cautions not to limit checks to state-required levels. He explains that many states have "one-dimensional" background check requirements, such as statewide criminal checks or nurse aide abuse registry checks. "Instead of stopping the background check here, take advantage of the many information sources available to facilities, and close potential gaps in an employee's background that can leave a facility open to liability." He adds that facilities should consider checks outside their immediate geographic area.

For its part, the federal government, under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, established a seven-state pilot program to evaluate national and state background checks for direct-care LTC employees, operating until September 2007 (for more details, visit **www.cms.hhs.gov/medicaid/survey-cert/bcp.asp**).

Background checks are not foolproof and are certainly subject to human error. Take the case of nurse aide Johnny Gordon, whose criminal history was missed in two background checks because he was mistakenly classified as a female during one search and was checked under the name "Johnny Cordon" in another. After being hired for the second time by the same chain, Gordon brutally raped a female resident with a showerhead.[2]

State nurse aide registries are plagued with their own errors, according to a recent OIG report. For example, the OIG found that some individuals with substantiated findings of abuse, neglect, or misappropriation of property in one state were actively certified in other states; many states fail to update their registries with the names of individuals with substantiated adverse findings, as they are required to do under federal law.[3]

If a prospective hire passes the background check process, Gipson recommends a thorough interview, in which a candidate is asked to respond to different scenarios to gauge how he/she handles stressful situations. During new employee training, staff must be told about moving through the facility's chain of command and how they can protect themselves from retaliation if they witness abuse; Gipson says staff should be told they can report anonymously through their local LTC ombudsman or through a professional association like the National Network of Career Nursing Assistants. She adds that supervisors should engage in "antenna work," keeping all their senses alert for potential abuse.

In fact, Linda Williams of GuideOne Insurance, which provides insurance for the LTC market, says that management and staff should be aware of the following possible changes in residents as key indicators:

- difficulty in walking or sitting
- pain or itching in genital areas
- the occurrence of sexually transmitted diseases
- unexplained bruising, welts, lacerations, fractures, or other injuries
- decreased socialization
- self-injurious behavior and/or attempts to hurt others
- fear of specific people or places
- habit disorders such as pulling hair or ears

And don't forget about effective communication. Gipson warns that staff must feel comfortable talking with management or they will not report abuse.

The federal government requires nursing homes to report all allegations of abuse to state survey agencies and other state officials (as emphasized in a December 16, 2004, memo, available at **www.cms.hhs.gov/medicaid/survey-cert/sc0509.pdf**). Beyond such notification, adds Williams, when an allegation is made:

- don't minimize the situation;
- safeguard the resident and provide the medical and psychological care needed;
- separate the alleged perpetrator from residents during the investigation;
- immediately notify the family in a face-to-face meeting and explain the care measures and the investigation's steps;
- notify the police; and
- consider bringing in outside counsel to help conduct the investigation.

Facility staff and management—rather than outsiders—report the vast majority of cases, says Nancy Leveille, director of clinical and quality services for the New York State Health Facilities Association (NYSHFA). And one innovative program actually trains staff *and* residents, as well as families, to be on the lookout for sexual abuse. This educational program, offered jointly by the Nursing Home Ombudsman Agency of the Bluegrass and the Bluegrass Rape Crisis Center in Kentucky, is believed to be the first of its kind in the United States, and it educates all stakeholders on the signs and symptoms of sexual abuse and how alleged abuse should be handled. Sherry Culp, MSW, director of programs and services at the Kentucky ombudsman agency, says, "While most [residents] are safe and may not be at risk, [abuse] is something that does happen. We want them to know what sexual abuse is." She adds that sexual abuse in the nursing home is a secret fear of residents and families, and "there's something about bringing this information up that makes it less scary." The program has reached hundreds of residents and nearly 1,000 staff members.

A case of sexual abuse in a nursing home actually sparked a new state law. In New York, "Kathy's Law" is named after a comatose woman in a Rochester nursing home who was raped by an aide in 1995. The law created felony-level penalties for incidents of abuse involving a "vulnerable

elderly person." When the law was enacted in 1998, Gov. George E. Pataki commented, "A nursing home must be a place where our elderly receive compassionate, professional care—and a place where their families can have the peace of mind that comes with quality care. Safety should never be an issue." He added, "While the vast majority meet their responsibilities, too often there are instances where those charged with providing quality care instead inflict horrendous abuse on victims too weak to defend themselves."[4]

Dick Herrick, NYSHFA's president and CEO, notes that nursing homes are actually among the safer environments for the elderly, with their high levels of supervision and oversight; he says to consider, for the sake of comparison, the low level of staff supervision involved with home care.

Still, no matter how supervised the setting or stiff the punishment, no law or management practice will stop all abuse—sexual or otherwise—in LTC facilities. Yet with the right system in place to screen out potential abusers and encourage reporting of abuse, LTC facilities can minimize the risk to their residents, their reputations, and their bottom lines. ■

References

1. John FJ. Former nursing home aide convicted. Albany Democrat Herald. June 9, 2004. Available at: www.democratherald.com/articles/2004/06/09/news/local/news04.txt.
2. Marks Firm. The Dorothy System: Tracking nursing home staff who abuse patients. Sexual Assault Report. Available at: www.marksfirm.com/dorothy_system.html.
3. Office of Inspector General. Department of Health and Human Services. Nurse Aide Registries: State Compliance and Practices. Washington, D.C.: Department of Health and Human Services, 2005. Available at: http://oig.hhs.gov/oei/reports/oei-07-03-00380.pdf.
4. Office of the Governor of New York. Governor: Kathy's Law Shields Nursing Home Residents From Abuse. September 28, 1998. Available at: www.state.ny.us/governor/press/sept28_98.htm.