## Nursing home fraud, neglect and abuse much too common

(09/28/06 OpEdNews) By Evelyn Pringle

Residents in nursing homes are some of the most vulnerable and helpless citizens in the US, with nearly 1.7 million elderly and disabled persons residing in about 17,000 facilities. And as difficult as it is to believe in this day and age, there is indisputable evidence to show that many nursing home residents are being neglected and abused on a daily basis.

Legislation was passed by Congress in 1987, with a goal to improve nursing home care. However, following an in-depth investigation, a recent report released by Consumer Reports, found inadequate care in nursing homes is still very common, particularly in the large for-profit corporations that run nursing home chains all across the nation.

In order to receive funding from public health care programs like Medicare, the Nursing Home Reform Act requires the nursing home industry to comply with federal regulations related to the quality of care of the elderly in nursing homes and requires that "a nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident."

The revelations in recent cases about abuse and neglect in nursing home, prove that those requirements are not being met. One of the worst examples of documented harm to the nation's elderly began in February 2006, during an annual review by state inspectors in Kentucky that found an extremely high number of serious health and safety violations at the Lakeside Heights Nursing Center in Highland Heights, Kentucky's largest nursing home with 286 beds.

According to a report by the inspectors, obtained in April 2006, by the Cincinnati Post through an open records request, the inspectors found 10 residents had been placed in what the state termed "immediate jeopardy" because of substandard practices and procedures, including one patient who died in November 2005, after the staff failed to respond with proper treatment to a health problem with which he was diagnosed.

The report said the facility was often critically understaffed and that on 24 occasions only one licensed nurse was assigned to the entire facility and at times, the nurse on duty was not trained to administer intravenous fluids which placed three residents in jeopardy.

According to the report, the residents often could not get services or supplies from outside vendors because of bills that the nursing home had not paid. The inspectors documented one case in which a patient who was frequently choking on solid food could not get to an appointment with a doctor because the home was in arrears to the cab company.

The report said the local water district threatened to shut off service to the facility if the nursing home did not make immediate payments on an overdue bill of $40,000.

Those and many other problems in the report led Kentucky's Inspector General, Robert Benvenuti III, to tell the Cincinnati Post, that this was the worst case he had seen in his 26 months on the job. Mr Benvenuti said a major source of the problems was too few workers, which kept basic care from being performed.

In one instance, a state inspector saw a resident sitting, urine-soaked, in a wheelchair and two new pressure sores were identified on the patient's buttocks and the patient was not being checked every 2 hours as required by law.

In another case, an inspector saw a resident moving about the home in a wheelchair with an open, uncovered wound to the big toe and observed dirt and pieces of hair stuck to the wound, according to the report.

The resident reported having asked for new dressing at 7 am that morning, and when nobody responded, removed the old dressing. The report noted that a new dressing was not provided until 5:30 pm that day.

With not enough staff to get patients out of bed or turned in bed, inspectors found that residents developed new bed sores, or sores that they already had had worsened and that 31 residents did not receive doctor-ordered sore treatment.

One patient died of an electrolyte imbalance after the nursing home failed to follow the instructions of doctor ordered treatment. The report said, that nursing home staff failed to notify doctors of changes in the patient's condition, failed to properly assess the patient's condition, and failed to establish a plan to care for that person.

According to the Cincinnati Post, another resident did not receive treatment for blood coming from his mouth for eight hours, during which time bleeding also started in a chest wound and his rectum.

In another case, a resident left the nursing home unsupervised without permission several times and once walked to a nearby store, bought alcohol and was later found sitting in a puddle of urine, wreaking of alcohol, in a nursing home room. Another time the police returned the patient to the facility and staff had not even realized that he had left.

Inspectors found that one resident fell from a shower chair and sustained a skull fracture and that a plan to move the patient to and from the shower had not been developed.

Three residents did not receive doctor ordered intravenous antibiotic medications and the nurse in charge told the inspectors that nursing home officials knew she was not trained in intravenous administration, but continued to schedule her as the only nurse in the facility.

On March 29, 2006, the Centers for Medicare and Medicaid notified Lakeside that it would terminate funding for residents paid for by Medicare or Medicaid in 30 days because of health and safety violations that put patients at risk.

But the lead inspector says cutting funding is not enough. "I believe the standard of care was at such a low level that it constituted fraud," Mr Benvenuti said.

"You have money flowing into that facility from the federal government and state to provide services," he explained. "If those services are not provided, that is fraud."

In April 2006, Kentucky Attorney General, Greg Stumbo, announced that his office was investigating charges of abuse and neglect at Lakeside and whether the nursing home committed Medicaid fraud. In a statement, he said that accepting payment for care and services that are not delivered can constitute fraud.

The inspection report, he noted, shows that therapists had stopped giving services in the wake of huge unpaid bills, and that nursing home employees' checks had bounced and utility bills went unpaid.

The state also alleges that Lakeside did not perform proper background checks on all employees and according to the report, some employees had criminal records. In fact, one nurse hired had previously pleaded guilty to felony theft of a controlled substance and theft by unlawful taking.

According to Barbara Becker, who became a staunch advocate for elderly citizens in nursing homes after her mother-in-law was murdered in a nursing home, there are also the problems created by "the failure of many nursing homes to adequately protect residents from other abusive residents."

In her mother-in-laws case, she notes, the male resident who committed the murder had a criminal record, a history of over 50 instances of abusive behavior, and was described by a psychiatrist as "an accident looking for a place to happen."

According to the April 14, 2006, Kentucky Post, "Inspector General Robert Benvenuti III notified the Highland Heights nursing home that its state operating license will be revoked in 30 days and the center, the largest nursing home in the state, will be closed."

Attorney, Philip Thomas, who practices civil litigation in Mississippi, says there are similar cases of neglect, abuse and fraud in nursing homes all over the country.

Mr Thomas and attorneys, John Giddens and Pieter Teeuwissen, recently filed two lawsuits against the giant nursing home conglomerate Beverly Enterprises in federal court Mississippi.

One lawsuit is a breach-of-contract class action on behalf of residents who were not provided adequate care in accordance with current state and federal regulations and the other involves severe abuse and neglect of nursing home residents.

Beverly operates 342 nursing homes across the US and it remains the poster child for patient neglect, abuse and fraud in the nursing home industry.

On the top of the list of problems with policing nursing homes, critics say, is that surprise inspections are in reality seldom random and their level of predictability allows nursing homes to conceal the evidence of abuse and neglect.

This lack of surprise is very common in Mississippi, according to Mr Thomas, who says nursing home employees have told him that they always know when an inspector is coming and they are instructed to clean up the facility in time for the inspection.

"In Mississippi," he says, "inspectors visit at around the same time every year and if there has been no inspection for 12 months, then the inspectors can be expected to arrive soon."

According to elderly advocate, Suzie Bergland, of Moline IL, "The main problem with helping people who have problems at nursing homes, is that the industry corruption seems to be well ingrained."

"The nursing homes even seem to have purposely seen to it that people at the oversight agencies, are people who are loyal to the nursing home industry," she says, "like former nursing home Administrators."

All critics agree that the number one problem in nursing homes that leads to all others, is understaffing, and try as they might, regulators can not get the for-profit agencies to comply with mandatory staffing requirements. Instead they go to great lengths to con the inspectors when it comes to staffing.

For instance, according to Attorney Thomas, "When an inspection is due, Beverly facilities increase staffing to make sure they comply with state staffing minimums."

They also keep two separate work schedules he says. One to show inspectors with names of people who do not work at the home, and the true schedule that shows understaffing is rampant.

Attorney Thomas points the finger of blame for the gross abuse and neglect of the elderly in nursing homes due to understaffing, directly at the top management officials. "I believe that most nursing home employees are doing the best that they can," he states, "but have been put into a position to fail by the corporations running the homes."

Nursing assistants, he says, are the least trained, lowest paid, and most over worked employees in nursing homes. Their job description requires them to feed and bathe residents, assist them in and out of bed, help continent residents to the bathroom, clean and change the diapers of incontinent residents, reposition those who are at risk of developing bed sores, perform range of motion exercises on residents to prevent painful contractures of the hands and feet, help residents in walking, and provide other personal assistance to the residents in regard to their everyday living.

A major problem as far as believing complaints made directly by residents, Mr Thomas says, is that they are sick to begin with, making it difficult for family members to identify what problems are caused by the progression of their underlying conditions and what problems are caused by inadequate care.

"And of course," he notes, "in lawsuits the nursing homes blame everything on the underlying medical conditions and, without saying it, ask juries to buy into the notion that sick people do not deserve good care from companies that are getting paid to care for them."

Mr Thomas says unnecessary prescription drug use is also very common with residents in Beverly facilities. "Psychotropic drugs sedate residents and make them sleep more," he notes.

According to Mr Thomas, "caregivers in understaffed nursing homes need as many residents as possible to be asleep because there is not sufficient staff to adequately care for all the residents when they are awake."

"The downside for residents," he points out, "is that it damages their health because they are less likely to get out of bed, ambulate and otherwise move around, which is vital to staying healthy."

According to the lawsuits filed by Attorney Thomas, reimbursement for this inadequate care comes through several sources including private pay, Medicare, and Medicaid. In many instances, the complaint alleges, "residents' entire social security checks are signed over to Beverly to pay for the residents' stay."

The federal and state governments usually pay for a portion of the care, the lawsuit notes. However, reimbursement paid through Medicare pays a significantly higher amount than reimbursement by Medicaid, so the complaint alleges that Beverly makes it a "corporate policy" to attract residents who are Medicare eligible.

The typical Medicare resident at a Beverly facility, the lawsuit explains, is admitted directly from a hospital and is eligible for Medicare for only the first 100 days; so Beverly provides Medicare residents with more and better care than non-Medicare residents including physical therapy, occupational therapy, speech therapy, and a greater amount of hands on nursing care and charting, the complaint alleges.

Then, before the 100 days is up and the Medicare eligibility expires Beverly takes steps to have orders for therapy withdrawn because the therapy will soon no longer be paid for by Medicare.

As a result of Beverly's system of providing therapy only to Medicare residents and only restorative care to non-Medicare residents, Beverly provides differing levels of care to residents based on pay source in direct violation of federal law, according to Mr Thomas.

When nursing assistants become over worked due to understaffing, he says, one of the first duties that they eliminate is restorative care, which causes many residents to not receive this much needed, beneficial care.

Beverly's system of acquiring Medicare eligible residents, the complaint alleges, requires a regular influx of new residents from hospitals and the emphasis on acquiring these new residents can be potentially devastating to other residents. "Existing residents receive less care than the Medicare residents causing or potentially causing a general decline in their overall health," the complaint states.

"When the residents' health declines severely they either die or must be hospitalized, which frees up bed space to admit a new Medicare resident," it charges. According to Mr Thomas, this creates a vicious and improper cycle of substandard care that monetarily benefits Beverly.

William Glass is a plaintiff in the lawsuit filed by Mr Thomas. In the fall of 2004, Mr Glass was placed in the Beverly Healthcare Eason Boulevard facility in Tupelo, Mississippi because he had episodes of violent behavior, which were triggered by medication interactions.

During the entire time that Mr Glass was a resident, a foul odor that smelled like urine and feces, was present in the facility and children and grandchildren say they did not know that it was not acceptable for a nursing home to constantly smell of urine and feces.

Mr Glass alleges that the foul odor was a direct result of understaffing and that Beverly did not provide enough nurses and certified nursing assistants to meet the residents' bowel and bladder needs. As a result, incontinent residents who had urinated or defecated in a diaper were not cleaned or changed in a timely fashion. The soiled linens and bed pads were also not replaced in a timely manner, which further contributed to the foul odor.

In addition, for many residents who were originally continent but needed assistance getting to the toilet, Beverly's understaffing resulted in there not being sufficient staff to assist residents to the toilet and residents became incontinent who otherwise would not have.

When he entered the Beverly facility Mr Glass was continent of both bowel and bladder. But despite the fact that he was continent, employees at Beverly put diapers on him and encouraged him to urinate and defecate in diapers.

After putting him in diapers, the complaint states, employees did not regularly change him or keep him clean. On one occasion, family members found Mr Glass with his diaper so full of urine and feces that it was around his knees and on another, family members found him and another resident eating a meal with feces on their hands and wearing soiled diapers.

The lawsuit charges that Mr Glass was not properly bathed and was left in the same clothes for weeks at a time and that as a result of his unclean condition, Mr Glass smelled bad when his family visited. Virtually the only time that Mr Glass was bathed, the complaint charges, was when his family took him home and bathed him.

According to the complaint, Mr Glass lost between 50 to 60 pounds while a resident of Beverly as a result of substandard care and inadequate provision of food and hydration.

John Dobbs, another plaintiff in the lawsuit, was admitted to the Beverly facility in Ripley, Mississippi on August 16, 2002, because he had decreased mobility from a prior stroke. Due to his stoke, Mr. Dobbs could not communicate well with people including his family members.

Mr. Dobbs' experiences at the Beverly nursing home in Ripley are similar to the experiences of Mr. Glass in Tupelo. During his residency, the Ripley facility was chronically understaffed.

In fact in this instance, employees of Beverly themselves, told the Dobbs' family members that the nursing home was understaffed and that there were times when one person had to cover two wings of the facility.

As a result of the understaffing, Mr. Dobbs was not placed on a bedpan so that he could relieve himself and was forced to lay in his own urine and feces for long periods of time. He told his family members that he was soiling himself because nursing home staff would not respond to his call light.

Like Mr. Glass, Mr. Dobbs lost about 60 pounds while he was in the facility as a result of substandard care and inadequate provision of food and hydration. The food served in the facility, the lawsuit complaint alleges, was not tasty or nutritious as required by law.

The complaint charges, that a "sample supper at Beverly Ripley – according to a facility employee – consisted of one unheated slice of bologna, two pieces of bread, and some potato chips."

"This "meal" did not even include condiments such as mayonnaise or mustard," the complaint alleges.

During his stay, Mr. Dobbs' developed bedsores as a result of the inadequate care and in the end, had to undergo a foot amputation due to those bedsores.

Betty Coggins is also a plaintiff in the lawsuit, who was placed in the Beverly Tupelo nursing home after suffering a stroke and becoming paralyzed on one side of her body.

During her last 6 months at Beverly, Ms Coggins also lost between 60 and 70 pounds due to understaffing and not being fed.

Because of understaffing, the lawsuit alleges Ms Coggins was not turned enough and pressure sores developed that were so severe that they required hospitalization several times. Because she was not kept clean and was left lying in her own urine and feces for long periods, during one hospital visit, an emergency room physician reported that the unchanged bandages on her pressure sores had rotted into her body.

As a result of the inadequate care, according to the complaint, "The plaintiff in this case also contracted a severe infestation of scabies that was neglected and not treated or diagnosed for over a month while she endured severe physical pain."

"Her condition was worse than it otherwise would have been," the lawsuit states, "because her paralysis prevented her from scratching when she itched and she was permanently scarred from the scabies infestation."

Adding to the understaffing and resulting substandard care, the lawsuit alleges that Beverly maintains a bonus program tracked by a document known as the "Beverly Scorecard." The program awards bonuses to Administrators and Directors of Nursing whose facilities meet the budget and to executives who's managed facility segments meet or exceed budget.

This bonus program contains a scale so that the more a facility undercuts its budget the greater the bonuses are for the Administrator and Director of Nursing. "This gives Administrators and Directors of Nursing," the complaint alleges, "financial incentives to understaff, not request more than the budgeted staff, not provide adequate food to residents, and ignore caregivers' complaints about understaffing and inadequate care."

Mr. Thomas reports that he was happy to see the New York attorney general recently criminally prosecute employees of a nursing home for abuse and neglect of residents. "I wish more prosecutors would do the same," he states, "including prosecution of the corporate executives who put the systems into place."

"Unfortunately, although it is a crime to abuse and neglect nursing home residents," he says, "it is not the type of traditional crime that prosecutors usually prosecute."

"Prosecution" he points out, "would require prosecutors to leave their comfort zone and shift resources away from other areas of law breaking."

It seems as if prosecutors in some states have at least begun to chip away at abuse and neglect that amount to crimes against the elderly because on May 19, 2006, the Indy Star reported that, "A grand jury has indicted two former nursing home officials on neglect charges, alleging they allowed a resident to lie in his own waste for days with back sores and maggot-covered clothing."

As for private lawsuits, legal experts say they accomplish little when it comes to stopping abuse and neglect of the elderly. For instance, in October 2005, Beverly agreed to pay $18.9 million to 800 residents in nursing homes in Arkansas to settle two class action lawsuits, and yet the giant chain is facing more lawsuits this year for the exact same type of misconduct.

In another case, on May 4, 2006, after a 6-week trial, a jury awarded $20 million to the estate of a man who died at a Beverly facility in Frankfort, Kentucky after nurses failed to respond to his cries for help.

Twenty million is chump change to Beverly. On August 18, 2006, the US Department of Justice issued a press release to announce that Beverly Enterprises "has agreed to pay the United States and the State of California $20 million to settle allegations that its former wholly owned subsidiary, MK Medical, violated the civil False Claims Act."

The government charged that MK Medical submitted false claims to the Medicare and Medi-Cal programs from 1998 until 2002, while Beverly owned the company.

Beverly was permitted to settle the case by paying $14,487,278 to the United States and $5,512,722 to the state of California, and as usual, no company executive was charged or jailed for criminal wrongdoing.

Unfortunately, the prospect of prosecuting the for-profit nursing home chains and the culprits at the top, as well as obtaining justice in private civil actions, seems to be growing dimmer each year. To insulate themselves from liability, the largest nursing home conglomerates are going to great lengths to restructure their businesses. The latest stunt, according to Consumer's Reports, is where; "A nursing-home chain splits itself into little pieces, called "single-purpose entities."

"Some of these entities own the individual nursing homes," Consumer explains, "while others lease and operate the facilities, effectively putting the company's major assets--its real estate--beyond reach of a lawsuit."

Legal experts say the only truly effective tool for rooting out fraud, abuse and neglect in the nursing home industry falls under the False Claims Act. The Qui Tam provision in the Act allows persons with knowledge of fraudulent claims being submitted to federal programs like Medicare or Medicaid to bring a lawsuit against the facility on behalf of the government.

According to Lou O'Reilly, Founder of Texas Advocates for Nursing Home Residents, "We need more lawsuits filed against providers using the False Claims Act and have them pay back the government for abuse and neglect of residents."

"Maybe it would clean up the bad nursing homes," he says.

FCA charges can result in substantial penalties. According to cases compiled by the watchdog group, Taxpayers Against Fraud, in 2001, Vencor Inc paid $104.5 million to settle charges that it had submitted false claims to Medicare, Medicaid, and other government programs. $20 million of that amount, the Department of Justice said, was for false claims submitted related to failure to provide care, including inadequate staffing, improper care of decubitus ulcers, and failure to meet residents' dietary needs.

Critics say it should be mandatory for nursing homes to post a notice informing employees that under the provisions of the False Claims Act, whistleblowers can earn between 15 and 30% of money recovered from a nursing home that submits fraudulent claims to a federal program for inadequate care or services never rendered.

***Patricia M. Lally-Lloyd***
**8124 Surf Drive**
**Panama CIty Beach, Florida 32408**

**(850) 233-8440 H     (504) 400-1341 M**