Another enforcement tool: lawsuit

By Diane Gale
staff writer

'If nursing homes wind up paying damages because of care in the past, maybe they will try to improve care in the future.'
— Chuck Chomet, Citizens for Better Care

A NURSING home resident froze to death outside the home.

A woman on a puree diet suffocated on solid food she was given by a facility.

Another nursing home resident was supposed to receive daily enemas but hadn't received one for 17 days. Feces became impacted in her intestinal tract, and she was taken to a hospital where it was literally chipped away. The woman suffered a heart attack and died shortly thereafter.

These are just a few nursing home cases Detroit attorney Carole Chiamp has handled.

ONE WAY to improve conditions, she said, is to sue facilities for poor care. It draws attention by making the facility's insurance company pay a settlement.

Nursing home operators, however, argue that increasing numbers of lawsuits have caused insurance rates to skyrocket. In turn, that reduces care.

"The bottom line is that you have to teach them by taking their money," Chiamp replied.

The amount of litigation brought against nursing homes is small compared to lawsuits filed against doctors and hospitals, said Chuck Chomet, who in 1969 helped found Citizens for Better Care, a patient advocacy group. He now works as an attorney.

Nursing home residents are afraid to act because every aspect of their life is dependent on the facilities, he said.

"A lot of nursing home patients see themselves as their total environment being in the nursing home, and they don't want to challenge that," Chomet said.

CHIAMP PROMOTES a different approach to ensure better nursing home care: Relatively young, healthy retirees would be assigned to visit nursing home patients on a regular basis, acting as watchdogs for the residents.

She said the program could be implemented through a grant system offered by the UAW or other groups.

Usually cases that involve the poor and those close to death aren't worth taking due to lengthy attorney investigations and the likelihood of a small settlement, she said.

IN ONE SUIT handled by attorney Robert Garvey of St. Clair Shores, relatives found bed sores the size of grapefruit — known as decubitus ulcers — on a confused nursing home resident. It led to discovery of falsified records and gross negligence.

After the $240,000 settlement, there was no legal action against the facility adminstrator, owner or nurse, who changed and hid records to cover for her superiors. No punitive measures were taken to prevent similar incidents.

The victim's husband, in his late 70s, had cared for her until he was physically unable to continue. He placed her in a nursing home in Detroit.

WHEN FAMILY members visited, they were appalled by large bed sores on her tail bone, heels and left hip. They had her transferred from the Detroit nursing home to another facility.

The first facility's records, however, showed she had bed sores before she was admitted. But a social worker who visited her while she was still at home reported there were no sores at that time.

The nurse at the Detroit home admitted to falsifying the records. The nurse quit the nursing home, and the facility now has a new administrator and owner, Garvey said.

That case preceded Michigan's new tort liability laws. One, Public Act 184 of 1986, strengthens penalties for falsifying records.

"My purpose as a lawyer is, I can bring individual cases to the attention of the courts," Garvey said.

"WHAT IT really boils down to is that nursing homes are profit making institutions. In some nursing homes it means the bottom dollar, and in some it means care.

"Litigation changes conduct by hitting the pocket book so bad that they have to change. Possibly attorneys should have to report cases to the Health Department."

Chomet agrees.

"Unfortunately, the way it works is the resident has already been injured or is dead because of poor care. If nursing homes wind up paying damages because of care in the past, maybe they will try to improve care in the future."

The number of lawsuits and statistics on violations against nursing homes are deceiving, Chomet said, because residents and family members are hesitant to report problems.

Low-paid aides do the job

WANTED: Nurses' aides for nursing homes. Tough, dirty work. Low or minimum wage.

Nurses' aides do 80 to 90 percent of the work in nursing homes — cleaning up after patients.

But many nursing home advocates say the aides are inadequately trained. State officials say it's tough to ensure that aides are trained.

And the job turnover is high.

"They are paid minimum wage, which is less than what McDonald's pays," said Jeanette Beaupied, assistant project director for Citizens for Better Care, an advocacy group monitoring nursing homes.

"Would you rather clean (feces) and urine for eight hours a day, or would you rather go fling hamburgers?"

ABOUT 15 PERCENT of nursing staff in the nation's nursing homes are registered nurses, 14 percent are licensed practical nurses and 71 percent are nurses' aides. That's according to a 1986 landmark national study, commissioned by the Institute of Medicine affiliated with the National Academy of Science.

Is increased training in some cases the key to better care the federal government calls for?

"When I talk to people from unions representing nursing aide employees, they say there are incidents that people are hired and put on the floor with little or no training," said Hollis Turnham, long-term care ombudsman of Michigan Citizens for Better Care.

Michigan Department of Public Health rules require aides receive training at the nursing home. But the Health Department recognizes it's tough to ensure this training is provided.

THE DIRECTOR OF nursing and the nursing home operator are responsible for the aides' competency. Problems surface when the nursing director doesn't provide the instruction, said Evelyn Jones, a registered nurse and deputy division chief in the state Department of Health.

Training programs can vary from three hours to one week, Jones said. Also the aptitude and interest of employees vary. When aides fail in their jobs, the problem is usually traced back to poor management.

The turnover rate for nurses' aides is from 70 percent to more than 100 percent per year, which causes sress in resident-staff relations, the national study said. A high turnover rate is the result of difficult work, low wages and, often, minimal training, it said.

IF NURSING homes beefed up staff ratios "most of the problems would go away," Beaupied said.

"They'd have enough staff to clean a person so they don't sit in their urine for an hour. There would be enough staff to provide morning hygiene to patients — to clean debris and breakfast food off their clothing."

These suggestions will cost the facilities more money, according to the Health Care Association of Michigan, a trade group representing 270 nursing homes.

The association's answer is to increase the money paid to facilities by Medicaid, according to a recent association policy statement.

"The vast majority of nursing home patients are Medicaid patients, and what we do is dependent on that level of payment," said Charles E. (Chuck) Harmon, Health Care Association executive vice president.

"We're suggesting that, yes, let's have a better trained person, but let's also do a better job in recognizing the financial needs of the aides."

NURSES AIDES perform one of the "most emotionally and physically demanding jobs in our society," the federal policy statement says. Then it adds:

"Yet, this industry is paid through a Medicaid program that permits only minimal wages in return. Nursing homes must compete against the pay scales of many other higher paying industries where the work is far less difficult. Higher wages assuredly are part of the sohution to this dilemma."

Harmond responded:

"The problem that we do have is that there is a tendency to increase requirements for training without increasing funds."

He said he was unable to determine how much more would be needed. That would have to be identified by the health department, nursing facilities and the public, he said.

ASSISTANT STATE attorney general Joe Sutton, who worked last year on abuse charges against nursing home workers, said there are more effective means beyond arrests to improve care. He cited:

- More emphasis on teaching workers and residents to understand each other's needs.
- More attention to help residents adjust from their home life to an institutional setting.

"We have to decide whether this will be a home, or will it be a combination of an institution and a home," said Sutton.

"If it isn't really a home, then we should try to counsel the people who are there and their families that this is reality, and you shouldn't expect home care."

Nurse Karen Underwood gives Tina Slatina her medication before lunch at the West Trail Nursing Home in Plymouth. Underwood, who had worked as a hospital nurse, says she enjoys nursing homes more, even at a lower wage.