

Illinois Nursing Home Care Act: Addressing the
Needs of the Mentally Ill in Nursing Homes

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I. INTRODUCTION

On May 7, 2010, the Illinois legislature passed Senate Bill 326, the Nursing Home Care Act (“Act”).¹ This Act entails significant changes regarding how Illinois regulates nursing homes.² In particular, the Act encompasses several sections that address the quality of care issues relating to nursing home residents with mental health needs. Over the past two decades nursing homes admissions have undergone a transformation, with important changes in the proportions of nursing home residents with mental illnesses being admitted.³ As a result, this Act aims to address the unique concerns associated with caring for nursing home residents with mental health illnesses.

This article will discuss the recent history of treatment of mentally ill, various attempts to remedy the shortcomings of treatment, the present status of mentally ill patients in Illinois, and the inefficiencies of Illinois’ current legislative attempt. In general, the Act is Illinois’ attempt to undertake many of the issues and shortcomings that currently exist for providing

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1. POLSINELLI SHUGHART, ILLINOIS LEGISLATURE PASSES NURSING HOME CARE ACT REFORM-WHAT PROVIDERS NEED TO KNOW NOW 1 (May 2010), available at <http://www.polsinelli.com/publications/healthcare/resources/ltc0510.pdf>

2. *Id.*

3. Catherine A. Fullerton et al., *Trends in Mental Health Admissions to Nursing Homes, 1999-2005*, 60 PSYCHIATRIC SERVS. 965, 965-966 (July 2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2759604/>

adequate care to patients living in nursing homes with mental illness needs.⁴

II. THE HISTORY OF TREATMENT OF MENTALLY ILL

Large portions of residents in nursing homes have mental illnesses.⁵ While different studies using different methods for identifying mental illness make it difficult to ascertain exact numbers by state or nation-wide, it is clear that the number of nursing home residents with mental illnesses has risen.⁶ As a result, the quality of mental health care in nursing homes has been a major policy issue.⁷ One of the key policy issues for lawmakers is whether nursing homes are the appropriate care facilities for those with mental illness.⁸ These residents have unique care needs and unique signs of quality of care.⁹ For example, the introduction of new psychiatric drugs in the 1950's changed the way care was administered to mentally ill patients.¹⁰ Psychiatric drugs are prescribed to patients suffering from schizophrenia, Alzheimer's disease and other mental conditions.¹¹ It was the hope that the psychiatric hospital patients could function in the community if they were

4. See generally David Jackson & Gary Max, *Quinn Signs New Nursing Home Safety Bill*, CHI. TRIB., (July 29, 2010), available at http://articles.chicagotribune.com/2010-07-29/news/ct-met-nursing-home-bill-signing-20100729_1_nursing-home-public-health-dangerous-patients (explaining how the Chicago Tribune conducted a series of investigations which exposed numerous issues at facilities that house younger psychiatric patients).

5. David C. Grabowski et al., *Quality of Mental Health Care for Nursing Homes Residents: A Literature Review*, MED. CARE RES. REV. 627, 627-28(2010) [hereinafter *A Literature Review*] available at <http://mcr.sagepub.com/content/67/6/627.short>

6. See Ann D. Bagchi et al., *How Many Nursing Home Residents Live with a Mental Illness?*, 60 PSYCHIATRIC SERV. 958, 958 (2009) available at http://ps.psychiatryonline.org/article.aspx?articleid=100603&link_type=google scholar

7. Literature Review, *supra* note 5, at 628.

8. David C. Grabowski et al., *Mental Illness in Nursing Homes: Variations Across States*, 28 HEALTH AFF. 689, 689 (2009) available at <http://content.healthaffairs.org/content/28/3/689.abstract> [hereinafter *Variations Across States*].

9. *Id.* at 689.

10. See Victor A. Molinari et al., *Mental Health Treatment in Nursing Homes*, 12 MARQ. ELDER L. 1, 3 (2011-12).

11. Gavin P. Lentz, *Investigation Finds Nursing Homes Administering Unneeded Psychiatric Drugs to Patients* Mar. 24, 2013, <http://www.eldercareneglect.com/investigation-finds-nursing-homes-administering-unneeded-psychiatric-drugs-to-patients>.

given the necessary medical support.¹² However, nursing homes became the de facto placement for these patients because states were ill equipped to find alternative placements.¹³ Unfortunately, the staffs in many nursing homes were inadequately trained and did not know how to address the special needs of the mentally ill.¹⁴

This issue persists today, and as a result large numbers of mentally ill individuals are placed in nursing homes with psychiatric medications being used as their primary treatment.¹⁵ Prescribing medication in this fashion is not an adequate solution because it inhibits individuals from pursuing an independent lifestyle, which was one of the initial hopes of psychiatric medication.

III. PREVIOUS ATTEMPTS TO REMEDY

To address issues relating to the standard of care in long-term care facilities, Illinois passed the Nursing Home Care Reform Act of 1979.¹⁶ When this statute was adopted it was considered “probably the most comprehensive in the nation.”¹⁷ The major provisions of the statute included: a right to safety and good care without abuse, the right to participate in one’s own care, the right to privacy, the right to stay in the facility, and general rights as a citizen and facility resident.¹⁸ In 1988, this statute was amended as the Nursing Home Care Act (“NHCA”).¹⁹ The NHCA expanded previous legislation by adding a Resident’s Bill of Rights,

12. Molinari et al., *supra* note 10, at 3.

13. Variations Across States, *supra* note 8, at 689.

14. Molinari et al., *supra* note 10, at 3.

15. *Id.*

16. Susan J. Hemp, *The Right to a Remedy: When Should an Abused Nursing Home Resident Sue?*, 2 ELDER L.J. 195, 205 (1994).

17. *Id.*

18. *Id.*

19. PETER A. MONOHAN, ET AL., ISSUES IN LONG TERM CARE (ILCS ed.), available at <http://www.illinois-law.com/docs/NursingHomeLit.htm>

expanding the enforcement power of the Illinois Department of Public Health, setting minimum qualifications for skill levels and training for nursing assistants and technicians, and provided policing powers for community groups, relatives, or friends to become involved in monitoring the quality of care provided.²⁰ Nevertheless, the NHCA did not eliminate quality of care issues in Illinois nursing homes.

IV. PRESENT STATUS OF MENTALLY ILL PATIENTS IN ILLINOIS

More than 500,000 people living in nursing homes have a mental illness such as schizophrenia, bipolar disorder, depression, and anxiety disorder.²¹ Illinois has one of the highest rates of admission for individuals with mental illnesses into nursing homes.²² While some mentally ill patients receive quality care and treatment in Illinois nursing homes, others live in institutions that offer limited therapy.²³ This approach fails to provide appropriate individualized care for the mentally ill, and it is fiscally more expensive than community based treatment options.²⁴ Unfortunately, the push to address this issue comes at a time when the State of Illinois is suffering a severe budget deficit, and many state tax funded programs are being eliminated or scaled back. However, creating more community housing options would not only provide more adequate care to the mentally ill, but it could also save the State millions of dollars.²⁵

20. *Id.*

21. Variations Across States, *supra* note 8, at 689 (defining serious mental illness as schizophrenia and bipolar disorder which are considered the most disabling and most frequently associated with serious mental illness and, consequently, institutionalization among people with mental illness).

22. *Id.* at 691.

23. Gary Marx & David Jackson, *Illinois Struggles to Move Mentally Ill Adults Out of Nursing Homes*, CHI. TRIB., July 4, 2012, available at <http://www.chicagotribune.com/health/ct-met-nursing-home-report-20120704,0,7396495.story> [hereinafter *Illinois Struggles*]

24. Mary Susan Littlepage, *Advocates for the Mentally Ill Criticize Illinois Nursing Homes, Housing Options*, Truthout (2009), <http://archive.truthout.org/1113093>

25. *Id.*

*A. Illinois' Attempt to Improve Care with the
Nursing Home Safety Task Force*

In 2009 the Illinois government began to consider ways to improve Illinois nursing homes after an investigation revealed numerous reports of sexual assault, violence, and drug abuse in troubled facilities.²⁶ On October 3, 2009, Illinois Governor Patrick Quinn initiated the Nursing Home Safety Task Force (the "Task Force"), to ensure the safety of Illinois nursing home residents.²⁷

The Nursing Home Safety Task Force Report (the "Report") examined what issues were prevalent in nursing homes and suggested ways improve the safety of residents. The Report stated that almost all of the regulations regarding the state's nursing homes, as well as the facilities themselves, are intended to provide care for elderly adults who can no longer care for themselves.²⁸ In addition, the Report stressed that nursing homes are not the appropriate care facility for young individuals with serious mental illnesses.²⁹ The Task Force found the mixture of vulnerable elderly patients with mentally ill patients, who can often be aggressive, was catastrophic.³⁰ Rather, a more appropriate setting for young, mentally ill patients would be specially designed and monitored community residential setting.³¹

The Task Force recommended raising the standard of care offered in nursing homes, thus ensuring the availability of appropriate treatment for residents.³² Additionally, the Report encouraged offering more community-

26. Illinois Struggles, *supra* note 23.

27. Letter from Michael Gelder, Chair, Governor Pat Quinn's Nursing Home Task Force, to Governor Quinn, Governor of Illinois, Nursing Home Safety Task Force (Feb. 19, 2010) (on file with Governor Pat Quinn, Nursing Home Safety Task Force).

28. GOVERNOR PAT QUINN, NURSING HOME SAFETY TASK FORCE 1 (State of Illinois, 2010) [hereinafter TASK FORCE].

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 3.

based residential options for individuals with mental illnesses.³³ The recommendations fit into three categories: “(A) Enhance the Pre-Admissions Screen and Background Check Process, (B) Set and Enforce Higher Standards of Care, and (C) Expand Home and Community-Based Residential and Service Options.”³⁴ However, the Report failed to address how these changes will be funded. It merely set forth new ideas for legislation without a plausible way to implement them across the state.

B. Assessment of Patients with Mental Illnesses

The Nursing Home Care Act was signed into law, and many of the recommendations set forth by the Task Force are reflected in it. Facilities that offer psychiatric rehabilitation are now required to carry a special certification.³⁵ If a facility does not obtain this special certification, it cannot admit patients with serious mental illnesses.³⁶ Prior to being admitted into a nursing home, patients are pre-screened, by a certified professional, to ascertain if they have any mental illnesses.³⁷ This assessment is meant to provide a clear indication of patients’ needs in order to ensure quality care is being provided. Furthermore, the Department of Human Services reassess all persons diagnosed with having a serious mental illness after the first ninety days, then six months, and yearly

33. *Id.*

34. *Id.*

35. POLSINELLI SHUGHART, *supra* note 1, at 2. To carry the special certification nursing facilities will have to meet certain staffing requirements. *Id.* These requirements will gradually increase. *Id.* Effective July 1, 2010 facilities will be required to provide 2.5 hours of nursing and personal care for each resident requiring skilled care and 1.7 hours of nursing and personal care for each resident requiring intermediate care. *Id.* By January 1, 2014 the Act states facilities will be required to provide 3.8 hours of nursing and personal care for each resident requiring skilled care and 2.5 hours of nursing and personal care for each resident requiring intermediate care. *Id.* Additionally the Illinois Health Facilities and Services Review Board may deny a permit based upon an applicant’s prior licensure history. *Id.*

36. *Id.*

37. *Id.*

thereinafter.³⁸ This continual reassessment will be done in order to ensure the individual has a continued need for care.³⁹ However, there has been no indication if this is being successfully implemented in nursing homes, or more importantly, if it is having the desired effect.

1. Psychotropic Drug Administration

Before the 1990's psychotropic drugs were primarily used on adults with severe psychotic disorders.⁴⁰ Psychotropic drugs should be prescribed and administered to patients with schizophrenia, Alzheimer's disease, and other conditions, as the physician deems necessary.⁴¹ However, today these drugs are being prescribed to a much larger and diverse clinical population.⁴² Investigations revealed that Illinois nursing homes gave these drugs to residents, without cause or proper physician supervision.⁴³ Improper use of psychiatric drugs can have dire effects ranging from tremors to an increased risk of falls and death.⁴⁴ Often, doctors will approve the administration of a psychiatric drug over the phone without ever seeing the patient.⁴⁵ Despite the high prevalence of mentally ill residents in nursing homes, most facilities do not have access to mental health provider with proper training in psychiatry and mental health treatment.⁴⁶

The Task Force recognized this issue and called for a policy to assure

38. *Id.*

39. *Id.*

40. Stephen Crystal et al., *Broadened Use of Atypical Antipsychotics: Safety, Effectiveness, and Policy Challenges*, *HEALTH AFF.*, 770, 770 (2009), available at <http://content.healthaffairs.org/content/28/5/w770.abstract>

41. Lentz, *supra* note 11.

42. Crystal et al., *supra* note 40, at 770-771.

43. Sam Roe, *Psychotropic Drugs Given to Nursing Home Patients Without Cause*, *CHI. TRIB.* (Oct. 27, 2009), available at http://articles.chicagotribune.com/2009-10-27/health/chi-nursing-home1-psychotropics-oct27_1_dangerous-lethargy-psychotropic-drugs-nursing-home

44. Lentz, *supra* note 11.

45. *Id.*

46. A Literature Review, *supra* note 5, at 628.

psychotropic drugs were being properly administered for only those with serious mental illness.⁴⁷ As a result, Illinois promulgated Sec. 1-120.7 of the Act which requires psychiatric services rehabilitation to be administered by, “an individual employed by a long-term care facility to provide for, mentally ill residents, at a minimum, crisis intervention, rehabilitation, and assistance with activities of daily living.”⁴⁸ This section aims to remedy the improper use of psychotropic drugs by ensuring patients are not given unnecessary drugs. If implemented properly and effectively, this section of the Act would improve the overall well-being of many residents as a study has indicated that those on psychotropic drugs were more likely to experience a decline in well-being, and when taken off these drugs, most patients’ well-being improved.⁴⁹ However, there has yet to be any serious discussion on the success or failure of this portion of the Act.

2. Nursing Staff Issues

Another prevalent issue affecting the quality of care for the mentally ill in nursing homes is staffing. Few homes have full-time mental health professionals on staff, or staff members that specialize in mental health care.⁵⁰ The lack of qualified care means most of the mental health needs of

47. TASK FORCE, *supra*, note 28, at 13. “The task force received many complaints about inappropriate use of psychotropic drugs. *Id.* Family members said relatives were drugged to the point of unresponsiveness. *Id.* Others testified that psychotropic drugs were repeatedly used for unapproved indications. *Id.* Family members specifically complained about the misuse of prescription drugs when orders permitted nursing home staff to administer the medications “as needed. *Id.* Reports show that only a few physicians prescribe the vast majority of psychotropic drugs for people with mental illnesses in nursing homes covered by Medicaid.” *Id.*

48. Nursing Home Care Act, § 210 ILL. COMP. STAT. 45 (2010). *See also*, § 2-104(b) (commands all medical treatment be administered as ordered by a physician), § 2-106(a) (“a resident shall not be given unnecessary drugs”), § 2-106(b) (“psychotropic medication shall not be prescribed without the informed consent of the resident, the resident’s guardian, or other authorized representative”).

49. Roe, *supra* note 43re.

50. Molinari et al., *supra* note 10 at 3-4.

residents are left untreated.⁵¹ The Task Force addressed this issue and called for higher staffing standards, including more nurses and rehabilitation staff, to improve care and treatment in nursing homes.⁵² In addition, the Report required a new certification of compliance required for all nursing homes that treat mentally ill patients.⁵³ This certification requires nursing homes to meet enhanced standards of resident care, staff, training, physical plant, mental health programming, and alcohol and substance abuse treatment, consistent with the mental health code.⁵⁴

The Act addresses staffing issues in Sec. 3-202.05 by increasing necessary staffing ratios.⁵⁵ Furthermore, Sec. 3-202.2(b) sets forth new requirements of certification of psychiatric rehabilitation programs.⁵⁶ Psychiatric rehabilitations services are mandatory at all licensed long-term care facilities.⁵⁷ This Section also requires sufficient staff to be available twenty-four hours a day, to meet the needs of all residents.⁵⁸ Nursing homes must train staff shall during orientation and then annually thereafter with the appropriate skills to meet the specific care needs of residents with serious mental illnesses.⁵⁹ Since residents with serious mental illnesses have a more difficult time voicing their needs,⁶⁰ having properly trained staff is essential in ensuring their needs are being met.

51. See *id* at 4. *see also*, *Nursing Home Indicted for Abuse of Mentally Ill Patient*, SLATER & ZURZ LLP (Mar. 20, 2009) <http://slaterzurz.wordpress.com/2011/12/27/nursing-home-indicted-for-abuse-and-neglect-of-mentally-ill-patient/> (last visited March 2, 2013)(explaining how staff did not know how to properly deal with a suicidal patient, and he ended up killing himself under their watch).

52. TASK FORCE, *supra* note 28, at 1.

53. *Id.* at 9.

54. *Id.*

55. Nursing Home Care Act, 210 ILL. COMP. STAT 45 §§3-202 (2010).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Lentz, *supra* note 11.

Increasing employment standards can lead to creating a better quality of life and care for residents. Additionally, better-educated staff members can reduce cases of neglect and abuse, which were prevalent in Illinois before this Act was adopted. While the headlines reporting nursing home abuse have died down, there is no clear indication that staffing issues have improved or the Act is being implemented.

3. Resident Care Plan

Furthermore, the Act also calls for a resident care plan⁶¹ outlined in Sec. 3-202.2(a) as well as Sec. 3-202.2(b).⁶² The Act requires facilities, with the participation of the resident and resident's guardian to:

“Develop and implement a comprehensive care plan for each resident that includes measureable objectives and timetables to meet the resident’s medical, nursing, and mental and psychosocial needs that are identified in the resident’s comprehensive assessment, which allow the resident to attain or maintain the highest practicable level of independent functioning, and provide for discharge planning to the least restrictive setting based on the resident’s care needs.”⁶³

For residents with mental illnesses this comprehensive plan includes quarterly reviews of residents’ treatment plans, notes the residents’ progress, and analyzes their current needs.⁶⁴ This is critical because statistically individuals with mental illnesses are more likely to stay in nursing homes for longer periods of time.⁶⁵ This situation is particularly true in Illinois because the State relies heavily on nursing homes to house the mentally ill.⁶⁶ As the Act states, monitoring mentally ill residents can

61. Nursing Home Care Act, 210 ILL. COMP. STAT 45 §§ 202.2 (2010).

62. *Id.*

63. *Id.*

64. *Id.*

65. Variations Across States, *supra* note 8, at 689.

66. Littlepage, *supra* note 24.

better address the residents' needs.⁶⁷ The Task Force addressed the desire to make community-based housing arrangements available to qualified individuals, who while mentally ill, do not have complicated medical health care needs requiring them to live in nursing homes.⁶⁸ One of the goals of the Act is to provide supportive housing and treatment to the mentally ill.⁶⁹ The purpose of the comprehensive care plan is to move qualified mentally ill residents out of nursing homes and into subsidized apartments or group homes where they would receive therapy and other services.⁷⁰

To ensure nursing homes are complying with the Act's new standards, the State periodically inspects the facilities.⁷¹ Sec. 3-212 requires surveyors to be trained about the appropriate assessment, care planning, and care of individuals with mental illnesses.⁷² This training is vital as surveyors need to be able to recognize when a facility is correctly complying with requirements of care.⁷³ Periodic inspection is necessary as the Task Force shed light on the fact that some facilities frequently violate rules, and when caught comply with the rules for a period of time, and then return to violating rules until a complaint or annual review brings the violation to light again.⁷⁴ This type of "yo-yo" compliance is handled under Sec. 3-212, which allows surveyors to inspect without prior notice to the facilities.⁷⁵ Additionally, the State levies penalties against individuals who pre-notify a facility of an impending inspection.⁷⁶ These measures are in place to ensure that the patients' needs are being met, which will improve the quality of

67. Nursing Home Care Act, 210 ILL. COMP. STAT 45 §§ 202.2 (2010).

68. TASK FORCE, *supra* note 28, at 15.

69. *See* Illinois Struggles, *supra* note 23.

70. *Id.*

71. Nursing Home Care Act, 210 ILL. COMP. STAT 45 §§ 3-212 (2010).

72. *Id.*

73. *Id.*

74. TASK FORCE, *supra*, note 28 at 10.

75. Nursing Home Care Act, 210 ILL. COMP. STAT 45 §§ 4.04 (2010).

76. *Id.*

care being provided by nursing homes.

V. INEFFICIENCIES WITH LEGISLATION

However, there is no guarantee the Act is going to solve these problems. Illinois had existing law that dealt with many of the problems addressed, however these laws were not enforced. Without proper funding it is unlikely this Act will compel greater enforcement in nursing homes. While the Task Force did address many shortcomings regarding quality of care issues in Illinois nursing homes,⁷⁷ and the Act addresses many of them through new rules and regulations,⁷⁸ the impact on care for the mentally ill has not been as great as hoped. As of June 2012 only forty-five mentally ill patients had signed a lease or moved into subsidized apartments or group homes.⁷⁹ This is substantially less than the first year goal of 256 people or more.⁸⁰ The Act fails to require any increase in spending on community alternatives to nursing homes, which is one of the reasons so few patients have been relocated to outside community alternatives.

VI. CONCLUSION

The Illinois legislature demonstrated a clear concern for the quality of care offered to mentally ill residents in nursing homes. The legislature recognized that nursing homes are inappropriate for mentally ill individuals, unless they have some other condition that requires the care of nursing home staff.⁸¹ While the Act has yet to be fully implemented, the early signs are not positive. Without greater resources, or a more efficient reallocation

77. *See generally*, TASK FORCE, *supra* note 28.

78. *See generally*, 210 ILL. COMP. STAT. 45 (2010).

79. Illinois Struggles, *supra* note 26.

80. *Id.*

81. Comments on Preliminary Recommendations of Governor Quinn's Nursing Home Safety Task Force (March 20, 2013) (statement from Illinois' Mental Health of America), <http://www.law.uchicago.edu/files/file/mhai%20response%20to%20taskforce.pdf>

of sources, it seems unlikely that the Act will be fully implemented and will not have the substantial impact on quality of care amongst the mentally ill in nursing homes for which proponents were hoping.