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COMPARING NURSING HOME RULES YIELDS 10 LESSONS FROM 50 STATES

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State nursing home regulations make dull reading. Their plotlines are obscured by their very form: sections on definitions, content embodied in dated and numbered internal paragraphs and subparagraphs, amendments over time, and multiple cross-references to other parts of state administrative code or statutes. Nonetheless, buried in state law pertaining to nursing homes is an important and sometimes gripping story of how states have struggled to shape the quality and future of residential care and adapt to competing modern demands for accountability and creativity.

A WORK IN PROGRESS

In March 2005, we began a time-consuming and complex task: identifying, compiling and comparing all state regulations pertaining to nursing homes to show how they promote or hinder resident autonomy and quality of life. The resulting website, NH Regulations Plus (NHRegsPlus), is a seemingly endless work in progress located at www.hpm.u.mn.edu/nhregplus/index.htm. As we develop this website, we hope that detailed examination and comparison of state nursing home regulations will pave the way for a discussion of the ideal set of regulations, not only for nursing homes but also for their newer residential care cousins, assisted living settings.

It is undoubtedly easier to complain about nursing home regulations than to read them. A close reading reveals provisions that seem obvious, such as “toilet paper in a suitable dispenser must be provided within reach of each toilet,” as well as rules that seem archaic: “Oil lanterns and other open-flame methods of illumination are prohibited.” Ambiguous and vague stipulations abound. For example, states require such elements as “a cheerful space,” “a satisfactory bedstead,” “a comfortable space” and “good condition linens” in nursing homes. Within the regulatory minutiae are many rarities and oddities, as well as some language that holds out promise for resident autonomy. (See “The States of Minutia” adjacent on this page.)

In 2005 and 2006, we analyzed how all states elaborate on the federal regulations and on any additional new categories of state regulations. In spring 2007, we began a reexamination process to determine whether and how, if at all, state regulations had changed during those two years.

The relevant forces of change include:

- Gradually changing federal nursing home regulations (states must meet federal minimums but may develop more stringent regulations);
- Pressuring nursing homes to promote culture change that would transform them into individualized care settings where residents could exercise autonomy and establish real homes;
- Encouraging nursing homes to present a public record of excellent clinical outcomes, including low to nonexistent levels of new pressure wounds, malnutrition, and falls and other accidents.

FEDERAL RULES

Nursing homes have been the object of congressional scrutiny, journalistic exposé, advocacy attention and reform efforts ever since Medicare and Medicaid legislation in 1965 generated a huge expenditure of public money for nursing home care. The federal rules governing nursing homes today largely stem from the most far-reaching effort at regulatory reform embedded in the federal Omnibus Budget Reconciliation Act of 1987. Those amendments to the Social Security Act established 14 federal standards covering such concerns as residents' rights; admission, transfer and discharge rights; resident behavior and facility practices, including physical and chemical restraint, freedom from abuse, and reporting requirements for suspected staff abuse; and quality of life, with language establishing residents' right to dignity and containing specific provisions for social services and activity departments. This detailed law also prescribed standards relating to resident assessment, quality of care, nursing services, dietary services, physician services, infection control, special rehabilitation services, physical environment and administration.

Nursing homes typically are critiqued as being one of the most highly regulated industries in the United States—second only to nuclear power. Relentless regulatory oversight is said to have stifled creativity and even common sense in creating livable care settings. The federal regulations are often blamed, although their provisos tend to be couched in general language. State rules can be much more voluminous due to their tendency toward detail. Before the NHRegsPlus project, state nursing home regulations had not been compiled or compared in any comprehensive way, either to each other or to the federal standards.

10 MAXIMS**FOR BRINGING CHANGE**

From all of our reading of the regulatory fine print, we have deduced the following 10 maxims that we hope can inform the long-term care field in its effort to bring about change.

1. When you've read one set of state regulations, you've read one set of state regulations. State nursing home regulations differ markedly in length, specificity, organization and accessibility to the reader. Most are replete with cross-references to other state statutes and regulations, such as food-service rules, public health reporting laws and residents' rights statutes. Some states, such as Montana, have not compiled nursing home regulations into a coherent body, expecting the users to find and collate information. A few states, notably Alabama, cleave close to the federal rules, but most states elaborate extensively on them.

2. State rules are more prescriptive than federal rules. Much of the detail in nursing home regulation comes at the state level. For example, the federal regulations do not even mention the phrase *nursing station*, but state regulations discuss nursing stations extensively.

3. Almost all states have developed specific nursing staff-to-resident ratios. Federal regulations have only two requirements in this regard: that facilities have enough nursing staff to accomplish the facility's care goals and that one licensed nurse be present on all shifts. States have begun to mandate specific ratios, but state regulations vary widely in their required ratio levels; their requirements for registered nurses, licensed practical nurses and nursing assistants; and whether and how they dictate a ratio for specific shifts or days of the week. When states specify nursing ratios by shift, they freeze facilities' ability to use staff more creatively to enhance resident well-being.

4. Waivers drive innovation in new construction. We analyzed a large body of material regarding new construction, which we had hoped was paving the way toward flexibility and allowance for neighborhood design, residential kitchens and so on. However, government waivers of regulation are still required for many of the innovations needed to promote a more normal living environment. Minnesota, one state that works through waivers, clearly explains the waiver processes and the waivers granted to nursing homes on its website.

One bright note can be found in Washington state, where preliminary documents and specifications for new construction must include a narrative with drawings that identify how the design promotes a homelike environment and supports the nursing home's resident-centered care and services. Also, Virginia now requires facilities requesting waivers to submit design plans with outcome-based measures related to how the changes will affect residents.

5. State regulations are moving toward greater disclosure requirements. Under residents' rights regulations, some states have enunciated disclosure requirements that are more stringent than those in the federal rules. Until recently, Arkansas actually required posting of the staffing ratios within each nursing unit rather than for the facility as a whole; that provision was retracted in 2007 after a lobbying effort to bring Arkansas into compliance with federal requirements.

6. Paradoxically, regulation can sometimes promote resident freedom and autonomy. Requirements that nursing homes disclose their operational details promote resident autonomy indirectly. Other rules—such as state specification of how facilities meet federal regulations on the use of physical and chemical restraints—do so more directly. The federal rule merely states that physical restraints may not be used for the convenience of staff or to discipline residents, only to secure a resident for his or her safety. State elaborations on use of restraints usually render the practice more onerous for facilities by requiring continual assessment, recording, observation, periodic loosening and so on. Some states—Oregon, for example—load their rules with requirements to solicit and comply with residents' preferences on a wide variety of matters, from healthcare to daily living.

7. Reasons for state regulations are sometimes shrouded in mystery. Although most nursing home regulations are post-1965 creations, their roots stretch further back, sometimes obfuscating the underlying rationale. We can guess why a Minnesota rule states that staff may not eat with residents—even though following this provision would interfere with culture change—but we are at a loss to understand why many states promulgate regulations that beds must be a minimum distance way from all walls. These rules effectively prevent residents from arranging furniture sensibly and according to their preference. The Florida legislature recently needed to enact legislation to change such a rule.

8. Some rules interfere with the ideal of the universal worker. Advocates for culture change have recently called for nurse aides to be given broader roles. However, some states explicitly forbid nursing staff to touch food or laundry. These prohibitions largely arise from infection-control concerns, but they also stem from fears that staffing ratios will be harder to calculate and enforce if some of the nursing staff's time is devoted to nonnursing functions.

9. It ain't necessarily so. Rules for nursing homes, voluminous as they are, cannot be blamed for all restrictions on residents. For example, many providers assert that the rules require fixed lighting to be placed above residents' beds—but we could not find such requirements in any state rules. Furthermore, fire regulations are often erroneously blamed for certain facility policies, such as prohibiting residents from using an iron in their rooms.

10. Where contradictions abound, a specific rule trumps a general one. Even federal nursing home regulations contain contradictions, a situation that is inevitable because some sections call for resident choice and individualization, whereas others establish protocols for safety. State rules multiply the contradictions. When advocates for culture change have sought federal interpretation of state rules that seem to restrict residents, regulators have rendered decisions that those states were within their rights in making more precise safety rules than were federally required—even though these rules interfered with resident choice. Some states do specify how facilities must seek and honor resident consent and preferences, but most apply regulatory fine points only to safety concerns. ❖

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THE STATES OF MINUTIA

How do states regulate nursing homes? Let us count a few ways. Following is the sometimes intriguing language in a sample of regulations in various states:

- **In Idaho:** “Only domesticated household pets (dogs, cats, birds, fish, hamsters, etc.) are permitted. Exotic pets and wild animals, even though trained, shall not be permitted due to the high potential for spread of disease and injury to patients/residents or staff. These include, but are not limited to, iguanas, snakes and other reptiles, monkeys, raccoons and skunks. Turtles are not permitted in the facility.”

- **Maryland** regulations stipulate: “[I]f a body holding room is provided, it shall be located to facilitate quiet and unobtrusive ingress and egress of bodies, convenient to the elevator and with an isolated exit. If a body holding room is not provided, a holding area shall be designated which approximates the above conditions. Existing facilities shall provide a method for holding which minimizes the psychological effect on other patients in the home.”

- **In Minnesota:** “If provided, a ceramic kiln must be installed in accordance with the Uniform Mechanical Code.”

- **In Maine:** “All residents seated at the same table shall be served at the same time.”

- **Delaware** requires: “Through recreational activities, [the facility shall] create a feeling of usefulness and security.”

NHREGS PLUS: THE ART OF THE SITE

In 2005, the Hulda B. and Maurice L. Rothschild Foundation made a grant to the University of Minnesota for compiling and comparing state nursing home regulations, as well as placing them into a searchable database. The resulting website, NH Regulations Plus (NHRegsPlus, located at www.hpm.umn.edu/nhregsplus), allows users to compare state regulations not only among states but also with federal rules by subject. Topics include general categories that mirror those in the federal regulations, as well as detailed subtopics of interest to the long-term care field, such as locking of doors, dining experience, or pets and animal therapy.

Under each of the dozens of topics, NHRegsPlus provides narratives that describe and compare the states and that comment on issues affecting the culture change movement. The narrative text and its accompanying tables include links to state regulatory language. In addition to searching by subject, users can search the database by state to identify trends within a particular state. Each state's home page features other relevant regulations and policies, including requirements for nursing home administrators and various residents' rights statutes.

Watch for further state-specific information on regulatory processes, such as waivers of regulations, resident satisfaction polls and the use of civil monetary penalties for enforcement. Also under construction is an art-of-the-possible section, which will showcase how states have worked within their regulations to enhance resident normality, quality of life and autonomy. This section, which will be available this fall, will allow users to find examples of excellence both within particular topics and by state. For more information about the project, visit www.hpm.umn.edu/nhregsplus/project_overview_page.htm. ♦

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