PATRICK MALONE & ASSOCIATES

Better Healthcare Newsletter from Patrick Malone

The Covid-19 pandemic has taken a terrible toll on residents of nursing homes and other long-term care facilities nationwide. Federal and state regulators have bungled their response, failing to safeguard residents. Governors and other political leaders have been mostly silent as the deaths mount. Families who have lost loved ones in these death traps want answers.

How can nursing-home owners and operators be held accountable for abusive, negligent, and even criminal behaviors that exposed hundreds of thousands of individuals in institutions to infection and killed tens of thousands of them, as well as health care workers and first responders?

The civil justice system is one option. Families can file wrongful death lawsuits, get records, take depositions and get to the bottom of what happened. But this path is not for everyone. It's complicated and takes a long time. In this newsletter, we give some guidance about what

IN THIS ISSUE

BY THE NUMBERS

42%

Percentage of all Covid-19 deaths in U.S. recorded in nursing homes. Facilities have tallied 59,000+ deaths. That's the equivalent of the population of Reston, Va.

families need to consider. One caveat: If you want legal advice about a specific case, please consult an attorney in your area. Our newsletter has good information but is no substitute for a personal consultation with a professional.

For distraught families, building a legal case on nursing home harms from Covid-19

Let's be clear: Each case questioning the care at a nursing home or other long-term facility during the pandemic will be unique, depending on the individual and circumstances. It is not easy or wise to come up with a one-size-fits-all checklist. We can start with this basic fact: Any viable claim must have compelling facts in the law's eyes, evidence beyond "my relative caught Covid-19 and was harmed or died."

A seasoned lawyer can help clients get insights about the strengths and weaknesses of a claim. For a first meeting, which is usually done without charge, families should bring whatever documents they have and any personal notes they have taken so the attorney can help construct a timeline of key events. Text messages with nursing home staff, emails, photos -- all this counts as potentially good evidence the lawyer will want to see.

"We've got to figure out early what we're working with," said Jeffrey Pitman (shown at right), a friend and partner at PKSD, a Milwaukee law firm which represents families in nursing-home abuse and neglect cases in the Midwest. "We need to help people work through emotions and figure out what may have gone on with their loved ones."

A lawyer will make gentle but extensive inquiries about many matters, said Pitman. He has handled thousands of personal injury cases and obtained tens of millions of dollars in verdicts and settlements in Wisconsin, Illinois, Iowa, and New Mexico and is recognized by his peers as a preeminent attorney for nursing-home abuse and neglect matters. The key areas of focus will include:

335,000

Number of diagnosed infections in 15,000 U.S. nursing homes — which are 8% of all U.S. cases. The infections are equivalent to half of Baltimore's population.

82%

Percentage of U.S. nursing homes cited for infection prevention and control deficiencies in one or more years (2013-17), according to a top federal watchdog

$100 billion

Amount that nursing home industry estimates it will need and has requested from federal government to deal with impacts of Covid-19

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Nine Steps
to Finding the Best Medical Care —
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- Residents, their overall health (especially underlying conditions), and the harm they may have suffered;

- The institution involved, notably its performance and history;

- The actions that occurred and what may be known about them.

Let's tackle these one by one:

An important health history

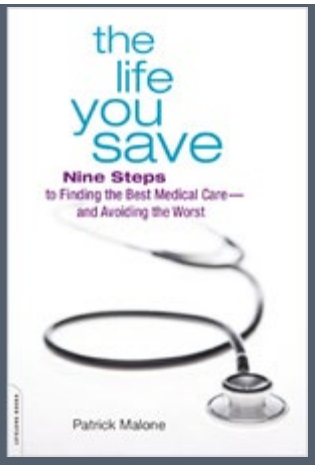
Families can help their case if they can detail concisely for prospective counsel the life and medical history of their loved one. What got them into the facility, and how serious were their health conditions? Did they already suffer from conditions that experts have identified as increasing patients' risk of dire effects from the coronavirus? Did they have underlying conditions with the heart, kidney (diabetes), or respiratory debilitation (pneumonia or chronic obstructive pulmonary disease, for example)? Did they have problems with weight, high blood pressure, and susceptibility to infection (compromised immune system)?

Before the fatal events, were they reasonably robust and even on an upward path, given their circumstances? Were they expected to go home after a rehab stay? Or, in all candor, were they frail, possibly confused, and even failing? Or somewhere between?

Family members may wish to talk among themselves to recall, too, how and how well residents' health and health issues were known, heard, acted on, and documented — by facilities' care givers and its medically trained personnel, and even by family, friends, or other residents and their kin.

A crucial diagnosis

With coronavirus-related claims, a vital consideration in a potential legal case will be a definitive Covid-19 diagnosis. Was the resident tested and confirmed positive? Did the infection cause harm? How so?



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Taming the cognitive biases that mess with our decision-making
Will Covid-19 pandemic throw rigorous science into pandemonium?
Protecting hearts, minds and souls in a time of pandemic
Special edition: Practical tips from a virus expert on how to protect yourself from Covid-19

The chaotic responses to the Covid-19 panic, sadly, have meant that medical authorities may not have determined in every case the coronavirus as the cause of death. Covid-19 casualties among the elderly, sick, and injured may be blamed on other diseases or conditions.

The federal failure to put forth a pandemic strategy that included aggressive nationwide testing, contact tracing, and isolation of the sick has left states, counties, cities, hospitals, clinics, and yes, nursing homes and long-term care facilities in too-often desperate straits. They have howled about the lack of coronavirus tests and timely results, as well as about unacceptable shortages in personal protective equipment and medical supplies for residents, patients, first responders, and a wide range of health care workers in need.

Coroners and medical examiners — overwhelmed at times by the pandemic — may have passed on Covid-19 testing of individuals who died in institutional care, putting up a significant hurdle for loved ones to make later legal claims. As time lapses, it gets more complicated to contest a death certificate and a formal finding as to cause.

On the other hand, Pitman said, families are getting notice from unexpected sources that loved ones tested Covid-19 positive: They are learning this in unpleasant fashion when contacted by state and federal authorities, including the federal Centers for Disease Control and Prevention, dealing in various ways with institutional outbreaks.

This round-about informing occurs, he noted, because federal officials went weeks into the coronavirus's spread before taking important steps such as shutting nursing homes and other long-term care facilities to visitors (including residents' friends and families). The key oversight agency for these institutions — the Centers for Medicare and Medicaid Services (CMS) — dragged its feet on requiring homes to inform residents, their relatives, and the public about Covid-19 infections and deaths.

CMS has taken much-deserved criticism for pulling its inspectors from their regulation of nursing homes and other long-term care facilities, shutting them, and essentially leaving residents isolated. That left friends and families blinded to what was happening to loved ones — and putting first responders and health care workers at risk. The owners and operators say they were desperate to test, isolate, and assist the infected and prevent deaths. They claim they were dealing with tough and unprecedented circumstances.

What really went on, though, in these institutions? Did staff actually care for residents with testing, isolating, and appropriate treatment? Read on for how skeptical families can learn about the institutional performance, another key element of any legal case against a long-term facility.

Getting information from many sources

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There are key distinctions among the types of facilities. Nursing homes and skilled nursing facilities (aka “Sniffs”) fall under CMS federal oversight, with support from states and local governments. But other institutions, such as assisted living and memory care centers, are regulated and inspected by state and local authorities.

These important distinctions will be explained shortly. It is fair to say, however, that long-term care facilities responded to the Covid-19 pandemic in too plodding a fashion and with weak infection control.

Their decision to lock down and close out visitors — which occurred too often too late and in haphazard fashion — may pose challenges to those who claim inappropriate things happened in the facilities. Families can assist prospective counsel in weighing their cases by talking through how they know what they do about loved ones’ experiences.

Who did what and when?

Was the facility aggressive or pokey not only about the novel coronavirus but also about infection control in general? Did families point out, and even document, instances of poor hygiene involving loved ones or others? Did they see health care workers follow common-sense practices like washing their hands frequently, covering their faces, and handling ill people and unsanitary materials in appropriate ways?

As the coronavirus spread, what did loved ones learn from residents and phone calls or video conferencing (Zoom or social media tools) about conditions in facilities? Did those inside tell them about testing or lack of it? Did they describe how institutions dealt with other ill residents and staff members? Were sick staff sent home and encouraged to stay away until tested and well? Did facilities set up areas, including separate wings or floors, to isolate those diagnosed with Covid-19? Were the ill kept in quarantine areas, even while dining or receiving specialized services? Were infected residents moved around facilities, in halls and elevators, in inappropriate and coronavirus-spreading ways?

Nursing-home care can be flabbergasting in its cost, with national estimates averaging $100,000 or so annually for a single room. Many residents, however, share space with a suite mate. During the pandemic, did loved ones learn how homes protected residents from possibly infecting each other, say, by drawing floor-to-ceiling curtains in shared suites?

How careful were health workers about infection-control practices when moving from resident to resident and among spaces for the infected and those who were not ill? Were staff members themselves upset and complaining, or were they comfortable with the testing and PPE available to themselves and residents?

Helpful health workers

Attorney Pitman said friends and families may want to compare notes to determine what health workers told them about loved ones' care, especially during the pandemic. Some staffers are more communicative than others and better about reaching out to listen to and address relatives' concerns.

One of the shames of long-term care is that it relies so much on poorly paid, overworked, and ill-trained low-level workers. Their duties often are dirty, hard, long, and physical. Turnover is rampant in homes among the usually well-intentioned 24/7 care givers. Pitman said claimants may not need to worry about getting staff in hot water for discussing their workplace. That's because some of the best, most informative, and engaged caregivers quit problem places and become facility "exes," providing a bonanza of information. Savvy staff, by the way, also may be acutely aware of how facilities' failings put them and their loved ones at risk, notably if they lack testing, personal protective equipment (PPE), or policies and practices to safeguard their own health.

Pitman also suggests looking at social media accounts to see if families or staff have posted anything about nursing-home conditions. Important information may be shared among members of Facebook or Twitter groups. Video recordings may have been posted on Instagram, YouTube, Tik-Tok, or other such sites. It's a good idea to look at facilities' online presence and capture information posted by public relations or communications people.

It's sad but true that local news media may provide far more and better information than regulators do. Still, the attorney will want to search for official inspection reports from such regulators.

Pitman suggested that claimants research whether police, fire, paramedic, or other first responders handled Covid-19-related calls at a given facility. (The Maryland National Guard, as shown in photo above by Sgt. James Nowell, assisted at Crofton Care & Rehabilitation Center in Crofton.) "These typically are skilled and responsible professionals who have actually gotten inside homes closed to the public," he said.

“They’ve seen and documented things that other people lacked access to.” Law enforcement personnel these days may wear body cameras that shoot video that must be kept for a time and could provide important insights about conditions in care facilities.

Owners and operators can't hide from long records of big problems

When a disturbing picture is developed of how individual residents in a nursing home or other long-term care facility were infected, harmed or even died due to Covid-19, do claimants have a case to pursue?

The definitive answer should come from the retained legal counsel. But some general thoughts may be helpful.

Most people have some knowledge of the legal system, whether from personal involvement in a court case or just from legal dramas on television, in books, or at the movies. Still, many legal concepts may be confusing, including the key example of *negligence* — a term often used in personal injury cases.

The law and the harm of 'negligence'

Negligence has a specific legal meaning, but the idea behind it is simple: It means an individual or organization did not act the way a reasonable person would have under the same circumstances to avoid hurting another. If you are texting and driving, for example, you are acting negligently — because reasonable drivers would not take their eyes off the road while behind the wheel to read or send a text.

Different types of negligence may apply in certain cases. In medical malpractice, the question of negligence is based on the standard of a reasonable health professional in that situation. If your surgeon operated on you without washing her hands or ensuring that the instruments were sterile, and you got an infection as a result, she acted negligently. That is because a reasonable surgeon would (1) scrub up and (2) ensure the instruments were sterile before operating.

To prove negligence, four required elements must be demonstrated:

1. **Duty:** The other person had a duty to act in a reasonable manner. For example, a driver owes a duty to others on the road (including pedestrians) to drive safely and to follow the rules of the road.
2. **Breach:** The other person violated that duty. In the case of a driver who struck a pedestrian, the driver may have violated his or her duty of care by not paying full attention while driving.
3. **Causation:** The other person's breach of the duty of care caused injuries to someone else. An added component is that this breach must be the proximate or "but for" cause of injury. In other words, you would not have been injured but for the other person's actions.
4. **Damages:** The injured person must prove the suffered losses claimed and the amount of those losses.

These same four elements apply in any case against a long-term care facility. To prove the case, your attorney will use knowledge of both statutory laws on negligence and case law, which is the body of decisions made by judges in court cases.

When the civil justice system takes on claims involving nursing homes and other long-term care facilities, judges and juries will be asked to apply a "reasonable" standard to the institutions and their situations during the pandemic. Nobody is perfect, and the legal system will not hold a care facility to the highest possible standard.

Facilities' poor performance

With nursing homes, attorneys like me and Jeff Pitman agree that coronavirus-related claims will probably be rooted in institutions' records of poor performance even before the pandemic. As caregivers for vulnerable individuals, owners and operators of homes pledge — and have a duty — to give care to a reasonable standard, including safeguarding residents against sickness and death. Too many nursing homes, as the public has become aware, have awful histories involving a range of problems, notably infection control, emergency preparedness, and staffing deficiencies.

Consider what the U.S. Government Accountability Office, one of the federal government's top watchdogs, reported about nursing homes and infection control before the pandemic (the report covers 2013-2017), and CMS oversight of long-term care facilities. GAO investigators found that infection-control problems were rampant, affecting 82% of facilities nationwide:

"Our analysis of CMS data shows that infection prevention and control deficiencies were the most common type of deficiency cited in surveyed nursing homes, with most nursing homes having an infection

prevention and control deficiency cited in one or more years from 2013 through 2017 (13,299 nursing homes, or 82% of all surveyed homes). Infection prevention and control deficiencies cited by surveyors can include situations where nursing home staff did not regularly use proper hand hygiene or failed to implement preventive measures during an infectious disease outbreak, such as isolating sick residents and using masks and other personal protective equipment to control the spread of infection.

“Many of these practices can be critical to preventing the spread of infectious diseases, including Covid-19 … About half—6,427 of 13,299 (48%)—of the nursing homes with an infection prevention and control deficiency cited in one or more years of the period we reviewed had this type of deficiency cited in multiple consecutive years from 2013 through 2017. This is an indicator of persistent problems.”

The Los Angeles Times has reported that “89% of [skilled nursing] facilities with the coronavirus had previous infection control violations that ranged from mishandling patients with highly contagious bacterial infections to not properly cleaning ventilators and other equipment. The data raised new questions about how prepared nursing homes and regulators were to deal with the pandemic.”

A lack of emergency planning

In fact, the facilities — abetted by lax and pro-industry regulation — were unready because they failed to plan in regular and formal ways for catastrophes, as most hospitals do, reported ProPublica, a Pulitzer Prize-winning investigative site.

ProPublica says that operators of nursing homes, assisted care, and other long-term facilities for the aged, sick, and injured complained to the Trump Administration that emergency planning would be too costly and demanding, especially given that their low-paid staffs experience frequent turnover and would require more intensive education than, say, might be required of highly trained health workers.

The administration went easy on enforcement of rules that would have forced owners and operators to determine how health workers would help residents shelter in place, evacuate, and how they would provide food, water, and medicine to them in a calamity. The rules also would have compelled institutions to think about contingency staffing and perhaps to think about stockpiles of needed supplies, including medical necessities and PPE.

Without such emergency planning — which big hospitals drill on with great gravity and consistency — care facilities were left to improvise in chaotic fashion, not only increasing risks to residents and health workers but also first responders. The homes’ lockdowns in harried fashion may have been a correct safety measure, but they also laid bare institutions’ crucial failure to communicate clearly, consistently, and comprehensively to all involved in a crisis — notably to terrified residents and their worried-sick friends and families.

Big issues with staffing

As for staffing challenges, Jordan Rau, a journalist with the independent, nonpartisan Kaiser Health News service, reported these chilling revelations before the pandemic:

“Most nursing homes had fewer nurses and caretaking staff than they had reported to the government, according to new federal data, bolstering the long-held suspicions of many families that staffing levels were often inadequate. The records for the first time reveal frequent and significant fluctuations in day-to-day staffing, with particularly large shortfalls on weekends. On the worst-staffed days at an average facility, the new data show, on-duty personnel cared for nearly twice as many residents as they did when the staffing roster was fullest.

“The data, analyzed by Kaiser Health News, come from daily payroll records Medicare only recently began gathering and publishing from more than 14,000 nursing homes, as required by the Affordable Care Act of 2010. Medicare previously had been rating each facility’s staffing levels based on the homes’ own unverified reports, making it possible to game the system.”

Claimants in Covid-19 cases may find invaluable evidence in individual homes’ years of sketchy inspections, notably if the institutions are cited repeatedly for similar violations and fail to show improvements. Homes’ “prior records are definitely going to be at issue” because claimants will look to them to show “a pattern of practice … a history of violations … a history of system failure with infection control — this is clear and understandable negligence,” Pitman said.

As to cries by owners and operators that “no one could have anticipated a world-changing occurrence like the Covid-19 pandemic” and “we did the best we could,” he fired back:

“It would be mind-boggling if a [nursing-home defendant] would claim that” in court, Pitman said, adding, “Their job is to keep residents safe. They say to families, ‘Trust us, we’ll take care of your loved ones.’ They’re supposed to meet certain state and federal standards. There are things they must do [with the coronavirus], and … it is mostly not complicated: The health care staff must wash their hands, wear PPE, test and quarantine the sick. Those who can’t meet basic standards of care need to be held accountable.”

While Covid-19 infections have exploded since the year began, nursing homes and similar long-term care facilities got multiple warnings about perils to the people in their care and their huge need for preparedness. National media, for example, began to focus on the novel coronavirus in a big way with a problematic outbreak in a nursing home in Washington state — this was in late February and early March. Owners and operators also could have learned harsh lessons about their facilities and the need for sweeping, rapid emergency plans due to wildfires and hurricanes, understanding from past crises, for example, how circumstances spinning out of control

can trigger extreme and unacceptable medical care for the sick, aged, and injured.

Shuffling patients from hospitals

During the pandemic, nursing homes and other long-term care facilities, of course, had their situations complicated by their long-standing — and profitable — link with hospitals. Public health officials and political leaders at the federal, state, and local levels have struggled to prevent coronavirus cases from overwhelming the medical system, specifically hospitals that provide emergency and critical care.

Hospitals — with medical services and beds that can be ungodly expensive and which can face penalties for excessive patient stays — aim as quickly as is appropriate to get the sick and injured to "next-level" facilities, including nursing homes, skilled nursing facilities, and other long-term care centers. In New York and other locales, this has meant that thousands of "recovering" coronavirus patients were pushed from hospitals into care institutions with already highly vulnerable Covid-19 residents. Angry families have blamed the patient transfers for spreading coronavirus infections and deaths.

This also has happened in roughly half the states: Political leaders and lawmakers have raised legal shields, aka liability immunity, for not only health workers (doctors, nurses, and others), hospitals, and clinics but also long-term care facilities and their owners, operators, and staff. Senate Majority Mitch McConnell and other congressional Republicans have campaigned for similar liability protection not only for medical-related enterprises but also for a range of businesses to be made federal (nationwide), in legislation affecting coronavirus aid for schools and the jobless. That legislation is being debated this month in Congress.

Pitman sees such shields, by law or executives' orders, as an obstacle to Covid-19 nursing-home lawsuits but not an insurmountable one: Plaintiffs and their lawyers "will have to dig deeper into the available evidence and the law to ensure that [the civil justice system] does not protect, as it should not, *reckless* or *intentional disregard*" of residents' health and safety, he said. He explained that these are, legally speaking, "another level up" of problem behaviors and actions of which defendants can be accused — and that existing liability immunity may not shield.

Key rights signed away?

To be fair, Pitman noted other challenges to coronavirus-related legal claims against nursing homes and other long-term care facilities. Families, for example, may be flabbergasted to discover that they agreed when their loved ones were admitted to not sue the facilities' owners or operators but to be tied up with them in an unbalanced legal process known as *forced arbitration*.

Forced arbitration is a booming part of the legal system that rips

important constitutional protections away from ordinary individuals who have disputes with big businesses, compelling them to have their cases considered in private systems with huge connections to the very corporate interests that appear as parties in legal controversies.

Consumers, often under time and resource duress, may fail to scrutinize long, wordy documents they may be asked to review and then sign —when they need medical services, or if they have an elderly and vulnerable loved one needing nursing-home care. They unwittingly may give up their right to seek later redress in the civil justice system, have their disputes heard instead by purportedly independent arbitrators.

Those arbiters, however, may work for large organizations that make their bread and butter by handling claims from corporations. The complaints are not heard in public, and decisions often may be kept private. Forced arbitration has become compulsory in sweeping fashion, intruding on Americans' lives not just in health care but also in: child sexual assault, credit cards, banks, debt collection, data breaches, video gaming, home and car buying, vehicle rentals, concerns about colleges' quality, student loans, ticket brokering, travel websites, wage theft, and workplace discrimination (claims both of racial and gender bias).

Courts, alas, have been reluctant to invalidate forced arbitration and allow claimants to pursue cases in the civil justice system, Pitman and I have found. "Covid-19, as I understand it, is not a basis now for avoiding forced arbitration, and that process tends to favor parties like nursing homes," he said.

Lawyers, he added, may contest the circumstances under which parties signed agreements that include forced arbitration. This may be a salient legal issue, for example, in states where authorities set up facilities like nursing homes to quarantine and care only for coronavirus patients — and their owners or operators then compel ailing, elderly, and injured people to sign forced arbitration agreements on admission. "It's not clear that individuals in these circumstances comprehend or have the legal capacity to sign" on for arbitration, he said.

Although corporations insist that forced arbitration helps them be more efficient by derailing nuisance lawsuits and resolving claims faster and more amicably, Pitman observed that this legal maneuver can be seen as yet another way that owners and operators of long-term facilities put profits ahead of resident care.

Profits and corporatization of care

Nursing homes and other facilities, despite "poor me" grumblings over thin profits, can be lucrative enterprises, as is demonstrated by the growing attention to the business by money-maximizing hedge funds and other private-equity investors. Wall Street doesn't see the people in need in the facilities. It focuses instead on wringing revenues and securing, for example, lucrative real estate that can be a key part of

campus-like settings for rest homes.

The corporatization of long-term care has resulted in enterprises creating Byzantine financial and operating arrangements. Those, Pitman noted, can make it tough for even successful plaintiffs to hold owners and operators accountable, especially to collect judgments awarded.

But with politicians largely silent and regulators seemingly impotent, how else can loved ones find out how vulnerable residents got infected, suffered harms, and died from Covid-19 while in nursing homes and other facilities? Has anyone heard even a peep yet about Congress or any state body gearing up an investigation into the lethal nursing-home debacle? No?

“Any lawyers worth their salt will, in digging into problem nursing homes, discover infection control, staffing, and systemic failures,” he said. “They will do better, more comprehensive research than state investigators can because they are too often underfunded, undermanned, and overworked. They already had a huge backlog of issues to deal with. We can find out through discovery much more than state investigators have time to do. We can learn not just what but how and why things happened in nursing homes. We can get answers on how to prevent problems and keep people safer. A huge benefit of litigation is to find out what happens when things go wrong, so it never does again.”

Exactly! That is the case that I have argued as to why medical malpractice lawsuits are so important — that courageous plaintiffs’ pursuit of justice can help practitioners and institutions improve their care, rooting out bad actors and taking on systemic failures that have been ignored, even though they may sicken, injure, or kill patients.

With a tip of the cap to Jeffrey for his help with this newsletter, it’s also worth noting his thoughts on what Covid-19 may have taught us about nursing homes and long-term care facilities. Experts, for example, want to reimagine and redesign the homes, especially to eliminate risky, outdated, sprawling, and open buildings with residents packed in them:

“We can make aesthetic changes, and other reforms could be good. But, fundamentally, we need to make an attitudinal shift in this country,” he said. “We’ve got to decide that nursing homes are places where people go to live — not to die. Their residents need care and attention, 24/7, and that is why they are in the homes. It’s why their loved ones are spending a lot of money.
“The real bottom line is not about profits but about the quality and quantity of staffing to help residents. This always has to do with money. Corporations have to put money in the numbers of nursing-home staff and the training of that staff. They can still make a lot of money, but not at the expense of residents. They could just take a little less profit.”

Yes, sir. Of course, as always, I’m hoping you and yours never suffer

with the coronavirus and that we all stay healthy through 2020 and beyond!

Lessons learned? Race, staffing, and focus matter

As the coronavirus pandemic savages more and more parts of the country, experts have seen that nursing homes and other long-term care facilities seem not to have heeded clear lessons. Infections and deaths keep mounting in the homes. So, what have public health officials and other experts learned about the facilities and their risks?

Many nursing homes that made “stringent efforts” to screen staff and enforce hand-washing and other infection-control measures saw no outbreaks or deaths, contends Seema Verma, the head of the industry’s chief watchdog, the Centers for Medicare and Medicaid Services (CMS).

Her “agency looked at homes with high rates of infection and death and noted that many of them had previously received poor grades for quality,” the Washington Post reported. “Other academics, including Charlene Harrington at the University of California at San Francisco and Yue Li at the University of Rochester, have connected the outbreaks to shortages in staffing. ‘Not all nursing homes were hit. Not all nursing homes report cases,’ Verma said. ‘They took the appropriate steps and precautions and the virus didn’t spread.”

Attempts by CMS and researchers to make a pithier summary of facilities, their Covid-19 risk, and their safety and quality records — as exemplified in federal “star” ratings of nursing homes — have met with stiff resistance. As NPR reported of the agency contention that poorly rated facilities have performed worse in the pandemic:

“David Grabowski, a professor of health policy at

As facilities re-open, a big chance for re-engagement by families and friends

Federal and state regulator slowly have begun to allow nursing homes and other long-term care facilities to reopen, meaning isolated, lonely, and fearful residents again can start to see loved ones and friends — with appropriate cautions taken.

This could be a significant time for the institutionalized aged, sick, and injured, said Jeffrey Pitman, a Milwaukee-based personal injury lawyer and a nationally respected legal expert on nursing-home abuse and neglect matters.

Get busy and get into the facilities as soon as possible for the sake of your loved ones, he counsels family and friends. Do be sure you and any other visitors do so safely and with every precaution possible, including getting tested, wearing face coverings, and keeping appropriate distance.

But go to the home “as frequently as possible for a while,” he said. “Get [residents’ family and friends] organized, so you have lots of people visiting. Don’t do it so it becomes a familiar routine or on schedule. Different family members or friends should check in at different times during the various visiting periods.

“The staff figure it out and they know who has visitors and who doesn’t,” he said. “It makes a difference. As they say, ‘The squeaky wheel gets the grease.’ And if you see something, say something. The less frequently that residents or

Harvard Medical School, found no evidence that quality ratings matter when it comes to COVID-19. He looked at nursing homes across 30 states. 'In terms of your five-star status, in terms of your staffing, in terms of whether you'd had a prior infection control violation, we couldn't find any kind of measure of facility quality that was correlated with having a Covid case,' says Grabowski.

Tamara Konetzka, a health economist and professor at the University of Chicago, has also looked at the quality of nursing homes and coronavirus. Like Grabowski, she found no correlation between quality ratings and Covid-19 cases. 'Even the highest quality nursing homes were caught completely off guard,' says Konetzka."

Research out of Canada has raised concerns about for-profit and especially chain ownership of nursing homes as a factor in poorer Covid-19 outcomes. The experts here cite two factors that may be keys to why: staffing (again) and the buildings themselves— older, bigger, and with many more shared rooms and communal spaces.

Race, of course, has leaped up as a stark disparity in long-term care facilities' coronavirus cases. As the Baltimore Sun, KPCC public radio in Los Angeles, The Southern Illinoisan, and the New York Times reported:

"Covid-19 has been particularly virulent toward African-Americans and Latinos: Nursing homes where those groups make up a significant portion of the residents — no matter their location, no matter their size, no matter their government rating — have been twice as likely to get hit by the coronavirus as those where the population is overwhelmingly white.

"More than 60% of nursing homes where at least a quarter of the residents are black or Latino have reported at least one coronavirus case, a New York Times analysis shows. That is double the rate of homes where black and Latino people make up less than 5% of the population. And in nursing homes, a single case often leads to a handful of cases, and then a full-fledged outbreak.

"The nation's nursing homes, like many of its schools, churches, and neighborhoods, are largely segregated. And those that serve predominantly

their families speak up, that is where quality-of-care issues crop up."

Pitman said that loved ones, if they have not before, should start keeping records of what they see and say to staff about residents' care, including what kind of response their polite requests receive. They may wish to start swapping information with families and friends of other residents.

It may require careful negotiation and respect for others, but he said he sees value in "nanny cams" for the vulnerable. Many long-term care facilities have resident-accessible internet services, so it is not a technology stretch for families to go out and buy, and ask to install, a wi-fi connected, remote-controlled video camera in Grandma's room, including with cloud services, so a record can be made of her day.

Some homes may balk because the device could intrude on other residents' right to privacy, notably if individuals share a suite. If the "nanny cam" isn't an option, friends and family — now that they can be close to residents — may wish to explore their cognitive and tech capacities to see if they can learn more about using smart phones, e-tablets, and even small laptop computers for useful and more frequent video conferencing.

Pitman also has interesting suggestions for residents' loved ones about further advocacy on their behalf. He said friends and family can keep pushing local politicians and regulators to do much more to inspect and safeguard facilities. Governors, mayors, and local council members have heightened awareness now as to how much burden can be placed on a community by problem nursing homes and other long-term care facilities. They can put first responders at risk, and they can overload hospitals at times when the medical system already is overwhelmed.

State and local regulators, public health experts, and the media may be more open than ever to hearing about issues in long-term care facilities. Coroners and medical examiners be harried but willing to serve the public and talk with concerned families. Don't overlook advocacy groups like the AARP. Ask around and you quickly can learn about others doing important work in your area.

Pitman said concerned friends and family might

black and Latino residents tend to receive fewer stars on government ratings. Those facilities also tend to house more residents and to be located in urban areas, which are risk factors in the pandemic. Yet the disparities in outbreaks among homes with more Latino and black residents have also unfolded in confusing ways that experts say are difficult to explain."

Still, a small and familiar care home in a tough part of Baltimore has attracted national media attention because of its admirable record in protecting its residents. As PBS reported, in an interview with the Rev. Derrick DeWitt, director of the 100-year-old Maryland Baptist Aged Home: Even as other care facilities across the country and in Maryland have been savaged by the sickness, his facility has recorded zero infections. Why and how did this occur in a small, church-supported facility in an "underprivileged and underserved area of Baltimore City?"

"I just listened to the news around the world and how this [coronavirus] was affecting other countries," DeWitt said. "And then, when I heard — when I heard the president say, we only had 15 cases, and he thought that, by the end of the week, it would be zero … I knew [to be skeptical and] that it was time that we take action … we have kind of gotten used to the fact that, if help is going to come, it's probably going to come too late, so we need to be prepared to take care of ourselves.

"The first thing we did, probably at the end of February, 1st of March, we locked down the facility. We allowed no visitors in or out. We knew that, if the disease was going to get into the nursing home, it was going to come from the outside. And probably it was going to be an employee that brought it in. So, we have a very rigorous screening process when they come to work. And it's almost an hour-to-hour detail on what you did the 12 hours or 14 hours that you weren't at work. Who did you see? Who were you with? We take their temperatures. Everybody's wearing masks, gown, gloves when they have any contact with residents.

"We had a full-time quality-assurance infection-control nurse for years who set up a lot of measures that would help us in time of catastrophe or pandemic or even an epidemic. I took a lot of criticism for having a full-time person

also consider getting in touch with police, fire fighters, and paramedics if a situation appears dangerous or presents other cause for big-time concern. Who, after all, gets called in the middle of the night if residents get so ill with the coronavirus that they need hospitalization or emergency care? Who may respond if residents die from the disease at a home?

Photo above from WDJT-CBS58 Miliwaukee video of nursing home resident visiting with grandchildren through window of locked down nursing home.

in a 30-bed facility, which most facilities even three times as large don't have a full-time infection-control person. But then, being a faith-based facility, a lot of people said, 'Hey, you're overreacting. I thought you were a man of God and you had faith in God.' And I just simply replied that, to be forewarned is to be forearmed. And I have faith in God, but I still wear my seat belt when I get in the car."

Symbol above is from CMS's simplied consumer rating system, designating a special focus facility — nursing homes with a history of serious quality issues or those included in a special program to stimulate improvements in their quality of care.

Recent Health Care Blog Posts

Here are some recent posts on our patient safety blog that might interest you:

- With the novel coronavirus crushing the economy and helping to fuel joblessness, individuals' isolation, and increasing hopelessness and despair among the already troubled, the opioid drug abuse and overdose crisis again is worsening — and fast.
- It may be surprising that the questions went unasked before. The outcomes may be less than shocking. But patients, in a new and nationally representative survey, have told hospitals to bug off with their relentless grubbing for donations from the people they care for. Doctors and ethicists long have been wary of the huge energy that big hospitals and major academic medical centers sink in to soliciting donations and how institutions' policies and practices for fundraising may sully public perceptions that medicine is about money and not science or compassionate care, the New York Times reported.
- Tens of millions of Americans who have not kicked the harmful smoking habit or who have only recently done so may want to keep a watch on the work of a blue-chip advisory group as its medical scientists consider how much lung-cancer screening best benefits tobacco users. The panel is seeking expert comment on its proposal for a greater number of older smokers and recent quitters to undergo low-dose computed tomography. That is a diagnostic procedure that combines X-rays and computers to give doctors a better look at patients' lungs with multiple views and cross-sectional images. If the U.S. Protective Screening Task Force — which advises the federal government on preventive care and issues recommendations that can affect patient costs and insurer coverage for procedures — formalizes its recommendations, more African Americans and women could benefit from earlier lung cancer detection and treatment.
- She was a 46-year-old Army veteran hired by the Louis A. Johnson Medical Center in 2015 with

no certification or license to care for patients. Reta Mays worked in the middle of the night, tending to elderly, onetime service personnel, sitting bedside and monitoring their vitals, including their blood sugar levels. Mays went room to room, largely unnoticed for three years on Ward 3A. But as unexplained deaths mounted on the surgical unit, the bespectacled mother of three — who had served in the Army National Guard and had deployed to Iraq and Kuwait — shifted from being a nurse's aide to becoming a murder suspect. She now has confirmed in court that she injected multiple doses of insulin in at least seven patients in the rural Veterans Affairs hospital a few hours away from the nation's capital. She did not say why when she pleaded guilty to multiple, second-degree murder charges. Her arrest and conviction ends a two-year federal investigation and it resurrects disturbing questions about the quality and safety of VA medical care, which is part of the nation's sacred bond to assist service personnel who have given so much in their nation's service.

- The national outrage over authorities' excessive use of force, especially against black men, may take law enforcement, first responders, politicians, and critics into a murky and nightmarish area — call it the unfounded medicalization of official control. Two fatal flash point cases — involving African Americans George Floyd in Minneapolis and Elijah McCain in a Denver suburb — already have raised disturbing questions about "excited delirium," a mental health description or diagnosis manufactured by authorities, and whether paramedics should be asked and then if they should administer powerful narcotics to individuals at police request.

HERE'S TO A HEALTHY 2020!

Sincerely,

Patrick Malone
Patrick Malone & Associates