

State Policies for the Residency of Offenders in Long-Term Care Facilities: Balancing Right to Care With Safety

Donna Cohen, PhD, Teresa Hays, MPA, and Victor Molinari, PhD

The presence of residents in long-term care facilities who are registered sex offenders, other predatory offenders, parolees, or inmates transferred by correctional authorities is controversial and has raised concerns about how to care for this potentially dangerous population who may jeopardize the safety of others. Although the present offender population appears to be small, it is likely that demographic and economic pressures will increase its size. Since 2004, 14 states have passed legislation about placement of

sex and other offenders in facilities and 5 have implemented non-law policies. Because legislation is relatively recent, it is not possible to evaluate best practices at this time. Research should be a priority to determine best policies and practices to balance the right to care with safety. (*J Am Med Dir Assoc* 2011; 12: 481-486)

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Long-term care facilities have been increasingly challenged by the admission of potentially dangerous individuals with criminal backgrounds who need long-term care but may be a threat to the safety of other residents, staff, and family members. This population is characterized by heterogeneity, including registered sex offenders, offenders on parole or probation for nonsex violent crimes, prison and jail inmates transferred by correctional authorities or the courts, violent offenders found incompetent to stand trial, and convicted felons.

Because the residency of offenders is controversial, the objectives of this article were to review state policies and practices dealing with the admission and care of residents with offender backgrounds and to suggest recommendations for future consideration. Study methods included a review of state legislative Web sites and interviews with staff in aging, health, law enforcement, corrections, and other agencies in the 50 states and District of Columbia to determine whether this issue is a concern and, if so, what actions have been taken or are pending.

Although persons who have been arrested, convicted, or incarcerated for violent crimes carry a risk of violence,¹ no research has been conducted on their dangerousness in community long-term care facilities. The offender population has a right to receive care, but it is reasonable to assume that some may pose safety risks. The type and history of offense(s), the severity of medical problems, disability, mental illness, history of substance abuse, and disruptive behavioral problems are among those factors that would affect a facility's decision about its ability to care for offenders. However, little is known about best practices and policies for risk assessment and abuse prevention for this population in long-term care settings. This is the first national review of state policies dealing with the offender population.

SIGNIFICANCE OF THE PROBLEM

National scrutiny of sex offenders and parolees in long-term care facilities was the focus of a Government Accountability Office (GAO) report² following several investigations by an Oklahoma-based disability and elder rights advocacy organization.³ The GAO used the Federal Bureau of Investigation's National Sex Offender Registry to identify 683 registered sex offenders living in nursing homes and intermediate care facilities for persons with mental retardation (ICFs-MR) during 2005, representing 0.05% of the 1.5 million residents of nursing homes and ICFs-MR. Approximately 88% of the sex offenders lived in nursing homes. Fifty-seven percent of sex offenders in nursing homes were younger than 65, compared with 10% of the overall nursing home population, and 30% were younger than 50. Ninety-nine percent of all

University of South Florida, Tampa, FL (D.C., V.M.); L-3 Communications/D.P. Associates, Jacksonville, NC (T.H.).

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Address correspondence to Donna Cohen, PhD, Department of Aging & Mental Health Disparities, Louis de la Parte Florida Mental Health Institute, College of Behavioral and Community Sciences, University of South Florida, Tampa, FL 33612. E-mail: cohen@fmhil.usf.edu

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registered sex offenders were males, which is similar to the general population.

Because a national registry of parolees does not exist, the GAO analyzed parolee databases from 8 states for the period January to September 2006. A total of 204 parolees convicted of nonsex offenses were found in long-term care facilities, and the most common crimes were burglary, assault, murder, or drug-related offenses.

Despite a history of public pressure to create legislation to confine sex offenders in prison, restrict residency, and monitor sex offenders upon reentry to the community,^{4,5} access to community long-term care has not been a serious concern until recently. The GAO report suggests that the number of sex offenders and parolees in long-term care facilities is not large, but the numbers may increase in the future with the growth of the aging population of prison inmates and the increasing prevalence of chronic illness and disability. Correctional systems will continue to be pressured to find better ways to manage the needs of these inmates within and outside the correctional system.⁶

Not everyone with a criminal background is necessarily dangerous, but the presence of offenders who may be potentially dangerous creates complex challenges for state agencies and long-term care facilities.^{7,8} These include identification of offenders, risk assessment, safety planning procedures, notification, management, expedited discharge procedures when residents become a serious threat, and communication among state agencies and long-term care facilities. Organizational, economic, ethical, and legal concerns are associated with these issues.

At the moment, there are no documented best procedures and practices for the long-term care of persons with offender backgrounds, and this report is the first national study of state policies and rules for dealing with this population.

DISCUSSION

States vary considerably in the ways they respond to the admission and residency of long-term care residents with offender backgrounds. Measures range from no action to informal discussions and/or state workgroups, to non-law policies and legislation. Since 2004, 14 states have passed specific legislation (Table 1). Eight of these states (California, Louisiana, Maryland, Massachusetts, Nebraska, Oregon, Rhode Island, Virginia) only specified sex offenders, whereas 6 states (Arkansas, Illinois, Minnesota, North Dakota, Oklahoma, Utah) included both sex and other violent offenders. Another 5 states (Idaho, Ohio, Texas, Washington, West Virginia) had instituted non-law policies.

Offender Long-Term Care Legislation

Table 1 summarizes how state legislation varied with regard to the types of facilities covered, mandated criminal background checks, preadmission screening requirements, notification of residents and families, requirements for treatment and abuse prevention plans, and state agencies involved with facilities. Because 4 states had detailed legislation about the processes involved, more specific information is summarized in the following sections.

Illinois

House Bill (HB) 4785 made Illinois the first state to require criminal background checks for all residents. Facilities must request them within 24 hours of new admissions, and if inconclusive, facilities must arrange for fingerprint checks unless waived by the Department of Public Health (DPH).

If an individual has a criminal record, facilities must fax the name and information to DPH for a criminal history analysis. Results must be given to the facility, the local police chief, and the state ombudsman. Facilities have the right to decline new admissions or initiate involuntary discharge proceedings if they cannot safely manage these residents.

DPH is responsible for developing plans to monitor residents with offender backgrounds, and the criminal history analysis must be placed in the resident's care plan. Private rooms are required for sex offenders. DPH must track the number of offenders and report annually to the General Assembly.

Senate Bill 326 is comprehensive legislation following a task force report to the governor that addresses safety issues and substandard care, including the need to improve the process and procedures mandated by HB 4785.⁹ The bill enhances preadmission screening, authorizes the development of a dangerousness assessment, and improves the background check procedures.

Minnesota

Applicants must self-disclose their status to the facility, and the law enforcement authority or corrections agent must notify the facility after their admission. If offenders have not disclosed their status, they can be discharged immediately when they are identified. Under federal nursing home certification regulations, facilities must give offenders individual notice of their appeal rights, but an appeal does not delay discharge.

Facilities must specify criteria to admit or reject offenders, conduct a risk assessment, and develop individualized abuse prevention plans to protect other residents. In 2008, the Department of Corrections (DOC) developed a policy to establish screening and reporting procedures for the management of predatory offenders in health care facilities and nursing homes. Offenders should be physically separated from other residents, and if not possible, be in a single room or have registered sex offenders as roommates. DOC field services agents must supervise offenders under specific guidelines.

Oklahoma

HB 1963 requires DOC to immediately notify the Department of Health (DOH) about any person registered as a sex or violent offender seeking placement from a DOC to a community long-term care facility. DOH must then notify the long-term care facility where the sex offender is seeking placement.

DOH must disseminate rules requiring long-term care facilities to determine the registration status of prospective admissions as well as current residents from local law enforcement authorities or the DOC. Once a long-term care facility is notified that a registered offender is a new admission or resident, the facility must immediately notify DOH. Upon registration of any designated offender, local law enforcement

Table 1. Characteristics of Legislation Regarding Residency of Criminal Offenders in Long-Term Care Facilities Passed in 14 States

State	Bill Year Passed	Facilities Covered	Background Check	Notification of Residents	Types of Offenders	Other Agencies Involved
Arkansas	HB 2258 2005	Nursing homes, rehabilitation facilities, or settings providing a similar level of care	No	No	Defendants convicted of felony or misdemeanor who are chronically or terminally ill may be incarcerated in nursing home detention program	Department of Corrections and Community Corrections
California	AB 217, Chapter 466 2005	Nursing facilities	No	No	Registered sex offenders	Department of Mental Health, Division of Addiction and Recovery Services
Illinois	HB 4785 2006 (Amended Nursing Home Care Act)	Nursing homes, residential long-term care facilities	Yes	Yes	Violent offenders and registered/convicted sex offenders	Department of Public Health, Office of Health Protection, Office of Health Care and Family Services
Louisiana	SB 326 2010	Nursing homes, residential long-term care facilities	Yes	No	Sex offenders	Department of Health and Hospitals, Department of Public Safety and Corrections Sexual Offender Advisory Board
Maryland	HB 568 2009 HB 879/SB 776 (Assisted Living and Nursing Home Residents Protection Act of 2010)	Nursing facilities, assisted living facilities	Yes	Yes	Sex offenders	Department of Health and Hospitals, Department of Public Safety and Corrections Sexual Offender Advisory Board
Massachusetts	SB 386, Act 680 2005/2006 MGL - Chapter 6, Section 178k	Convalescent or nursing homes, infirmaries maintained in a town, rest homes, charitable homes for the aged, ICFs-MR	No Sex offenders required to self-disclose	No	Admission of Level 3 sex offenders prohibited	Department of Corrections

(Continued)

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State	Bill Year Passed	Facilities Covered	Background Check	Notification of Residents	Types of Offenders	Other Agencies Involved
Minnesota	Omnibus Public Safety Bill Chapter 136, Article 3. § 63-1-1946 2005	Nursing homes, boarding care homes, hospitals, supervised living facilities, residential facilities for adult foster care, adult mental health treatment, chemical dependency for adults, or persons with developmental disabilities.	No	Yes	Predatory offenders	Department of Health Department of Corrections
Nebraska	LB 713 2005	Health care facilities with vulnerable adults	No	No	Level 2 & 3 sex offenders	Law Enforcement
North Dakota	LB 1119 2006 HB 1482 2007	Nursing homes, basic care facilities, assisted living facilities	No	Yes	Chronically ill or terminally ill sex and other violent offenders given early release, pardon, or parole	Department of Corrections and Rehabilitation
Oklahoma	HB 1963 2005	Long-term care facilities, including nursing homes, residential care homes, and adult day care centers	No	No	Offenders registered pursuant to the Sex Offenders Registration Act or any person who is registered pursuant to the Mary Rippy Violent Crime Offenders Registration Act	Department of Corrections, State Bureau of Investigations, FBI, Department of Health
Oregon	HB 2704 2008	Long-term care facilities, including nursing homes	No	No	This bill directs the Department of Health to request bids for a stand-alone, long-term care facility that will house only registered, elderly sex offenders	Department of Health
Oregon	SB 106 Section 11, ORS 181.586 2005	Long-term care facilities, residential care facilities	No	No	Predatory sex offenders on parole or post-prison supervision	Peace officers, County Health Departments, Department of Corrections, Department of State Police, Department of Human Services, Aging Services

Rhode Island	S2415 Chapter 540 2006	Nursing facilities, assisted living facilities, facilities licensed by the Department of Mental Health, retardation, hospitals, housing for the elderly	No	Under Development	Sex offenders
Utah	HB 125 2006	Health care facilities	No	Yes	Inmates given early release, pardon, or parole due to chronic or terminal illness Sex offenders Department of Corrections
Virginia	HB 2345/SB 1229 2007 HB 2346/SB 1228 2007	Nursing homes and assisted living facilities	Yes	Yes	Virginia Parole Board, State Police, Department of State

AB, assembly bill; FBI, Federal Bureau of Investigation; ICFs-MR, intermediate care facilities for persons with mental retardation; HB, house bill; LB, legislative bill; SB, senate bill.

must provide facilities with the offender's personal and criminal history, including a photograph.

State budget constraints have been a barrier to building a dedicated long-term care facility for older registered sex offenders designated in HB 2704.

Rhode Island

Senate Bill 2415 stipulates that long-term care facilities cannot admit sex offenders or offenders on parole or probation unless they can comply with safety and security measures and arrange appropriate behavioral health treatment.

The DOC must establish regulations regarding written notice to facilities when an offender is a resident or applying for admission. Written notice must include details about the offender's crime and contact information for the assigned probation or parole officer. DOC must also develop regulations to assess risk of dangerousness, specify criteria to prohibit admission or discharge a resident offender, and, when offenders are residents, to specify treatment plans and safety measures to protect other residents. DOC must also create regulations to supervise and monitor resident offenders.

State licensing agencies must establish regulations requiring facilities to (1) review offenders and develop recommendations for safety measures, including treatment; and (2) set criteria based on security risks for requiring facilities to disclose a resident's probation or parole status to staff, residents, residents' legal representatives, residents' family, and the state long-term care ombudsman.

Non-Law State Policies

Idaho

Idaho's Bureau of Survey Standards established a policy in 2005 to send a letter to all skilled nursing facilities outlining offender evaluation procedures, notification requirements, and procedures.

Resident offenders mobile enough to jeopardize the safety of others must be closely monitored, and Medicaid pays for the increased surveillance. The facility may discharge a resident offender if the facility decides that it can no longer maintain safety requirements.

Ohio

In 2005, Ohio expanded the definition of residence in its restrictions for sex offenders to include nursing homes, adult care facilities, and residential group homes within 1000 feet of any school.

Texas

In 2008, the Parole Division of the Texas Department of Criminal Justice established policies and procedures for the screening, placement, and supervision of offenders on parole or mandatory supervision who required nursing home care.

Washington

A Memoranda of Agreement exists between the DOC and the Special Commitment Center to house older individuals with mental health or offender histories. The Department

of Social and Health Services must request early notification for placement options and be given all records of offenders. Because of the risks these offenders pose, service providers charge more for placement.

West Virginia

Facilities may request direct notification by writing the Sex Offender Registry Office, and they must sign a nondisclosure agreement with the state police to only use the information for the protection of residents.

Recommendations

The population of predatory offenders, predominantly male, who have serious chronic disorders and/or are terminally ill has a right to long-term care, which must be addressed within the context of a safe environment for vulnerable, predominantly female residents. In general, state laws and policies should be guided by common sense when there are no regulations to explicitly direct relevant nursing home activities. First and foremost, the safety of residents, family members, and staff must be preserved. Because of the potential for physical harm and reduced quality of life, the needs of frail older adults for safety and security take precedence over the demands of offenders for less restrictive care and state requirements for cost-effective care. Laws and policies will be able to balance both imperatives only by thoughtful planning with all stakeholders publicly voicing their concerns.

Recommendations for state offender long-term care policies include the following:

- ◆ Inmates judged to be a serious danger to themselves and others should be cared for in the criminal justice system;
- ◆ In states with medical release statutes, offenders should be eligible for placement in community long-term care settings, if they are independently assessed to be at low risk for hurting others and are appropriate for admission;
- ◆ Offenders who are on probation, parole, or post-prison supervision should be evaluated for dangerousness before admission to long-term care facilities;
- ◆ Staff should be notified about the presence of a resident with an offender background using information stipulated in state laws;
- ◆ States should convene a Nursing Home Safety Task Force, similar to Illinois,⁹ to make state-specific recommendations;
- ◆ State regulatory oversight should be revised to specify criteria to determine whether facilities are following state laws and policies regarding admission of offenders, securing the safety of residents, and specifying procedures for rapid correction of violations; and
- ◆ States should establish a long-term care consultation center within an appropriate agency to provide technical assistance to facilities to manage potentially dangerous populations.

CONCLUSION

The sex offender population in long-term care facilities is probably relatively small in most states compared with those

living in the community, but little attention has been paid to their long-term care needs in contrast to reentry and management into the greater community.^{10,11} Likewise, the population of other types of offenders is also probably relatively small.¹²

Because offender legislation is relatively recent and many states continue to study the issue, it is not possible to evaluate best practices at this time. However, research should be a high priority to determine whether state laws or policies enhance the safety of our most vulnerable and frail population and to conduct a cost-benefit analysis of the most successful efforts. This initiative should be viewed as part of an overall program of care to improve long-term care quality by enhancing the safety and security of residents who may be injured by resident offenders, other potentially dangerous residents, or unskilled/predatory/abusive staff members.

Long-term care facilities also have a responsibility to review safe and appropriate approaches for managing offenders. There are many issues and practices to be discussed as a basis for policy, including residents' rights to privacy and care, staff training, protection of children, preadmission and ongoing violence assessments, admissions agreements, and discharge planning, as well as legal issues and institutional risk.

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