Elder Abuse in Wyoming: The Physicians' Role

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Case Studies from Wyoming Medicaid

CASE STUDY #1 - A 64-year-old woman s/p recent CVA was receiving home care from an adult daughter. She was bedridden and incontinent. She was on a Medicaid waiver, so a case manager conducted monthly home visits. Over a period of 4 months, the case manager noted progressive decubitus ulcers developing and enlarging, while the bed was constantly wet with urine. The daughter appeared to the case worker to be burnt out. The case manager kept referring this to the nurse, but there were no interventions and no requests for extra nursing assistance or wound care were made to the physician. The patient finally died at home, in pain and septic from bleeding decubiti.

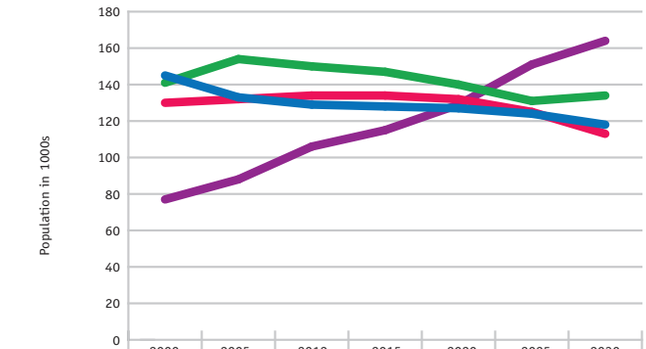
CASE STUDY #2 - A 77-year-old woman on a Medicaid waiver was taken to the ER 26 times by a "family member" with complaints of falls and pain, and requests for pain medications. Upon further inquiry, the home nurse had not been notified of these ER visits and had, in fact, documented that the patient was stable on her feet. It was discovered that the "family member "wasn't related at all. He was found to be verbally abusive to the patient, and had moved her into his home without her belongings. A referral to the Department of Family Services - Adult Protective Services (APS) was made for opiate diversion. The woman was admitted to an assisted living facility and has since stabilized.

CASE STUDY #3 - A couple in their mid-70's had been stable at home with waiver support, skilled nursing, and personal care support despite diabetes and neuropathy. However, their services were stopped by the adult son, who then began calling the primary care physician's (PCP) office saying his parents were in pain and needed more medication. He also moved them into his house. When the mother died, the son still phoned in for a refill of her opiates the day after her death and was able to pick them up. He also requested medication increases for his father. Upon questioning, the PCP had been unaware of these facts. The PCP is now aware, APS is involved, the father is living with another child, and the drug diversion has stopped. Proper officials were notified of the drug diversion.

Background Statistics for Wyoming

According to the American Community Survey (ACS), approximately 20% of Wyoming's population was aged 60 or older in 2014, including the 2% who are aged 85 and older. By all accounts the older population is expected to grow beyond 2030 as the generation of baby boomers (individuals born between 1946 and 1964) age and retire. Furthermore, it is projected that the fastest growing age group will be individuals aged 85 and older—a group most likely to experience disabilities and impairments that often require specialized programs and services.

Projected Wyoming Population Trends



	2000	2005	2012	2015	2020	2025	2030
0-19 years	145	133	129	128	127	124	118
20-39 years	130	132	134	134	132	125	113
40-59 years	141	154	150	147	140	131	134
60+ years	77	88	106	115	129	151	164

- 20.4% of Wyoming's population was over 60 in 2012.
- 31% of Wyoming's population will be over age 60 by the year 2030.
- By 2030, Wyoming will be the 4th oldest state in the country.

With the population of older adults growing, there will inevitably be an accompanying increase in abuse, neglect and exploitation of vulnerable adults in Wyoming. Elder abuse, neglect and exploitation have been subjected to decades of data collection, research, and studies. Those studies reveal some alarming statistics.

- It is estimated that approximately 1 in 10 seniors over the age of 60 is abused (not including financial abuse) each year. http://www.justice.gov/elderjustice/research/
- Elder abuse is grossly underreported with

between 1 in 14 and 1 in 25 cases of elder abuse coming to the attention of authorities. http://www.ncea.aoa.gov/Library/Data/index.aspx#abuser

- In 90% of abuse cases the perpetrator was a family member, typically an adult child or spouse. http://www.ncea.aoa.gov/Library/Data/index.aspx#abuser
- The majority of elder abuse victims are women living in the community, rather than nursing homes or other senior living facilities. http://www.justice.gov/elderjustice/research/

Who is considered a vulnerable adult? People 18 years of age or older who are vulnerable to abuse because they are unable to perform or obtain services needed to maintain their health, safety, or welfare due to a physical or mental limitation, or advanced age (60 years of age or more). Adults who lack sufficient understanding or capacity to communicate their needs are also considered vulnerable.

What is abuse? It often manifests as financial exploitation by an adult child or caregiver. Neglect or self-neglect, and physical or sexual abuse are other common forms of abuse. Intimidation, most often through threats that the victim or their family, friends, or pets may be deprived of food, shelter, or support unless conditions are met, is also considered abuse. An abuser can be a trusted family member, caregiver, or friend. Caregiver stress, substance abuse, financial problems, and personal problems can all cause a well-meaning person to become abusive.

Abuse can be difficult to detect in the typical office encounter, and co-morbidities need to be considered, such as depression or early dementia that may be developing. While there are screening questionnaires, such as the 15-question Hwalek-Sengstock Elder Abuse Screening test (H-S/EAST), the US Preventive Service Task force gives routine screening an "I" as the data is inconclusive for routine screening. Situations in which the patients' appearance is declining, the caregiver is refusing to bring the patient in, or a caregiver is answering all the questions for the patient, would be good situations in which the H-S/EAST could be administered.

If you have reasonable suspicions of abuse, remember that you are a mandatory reporter. If you think a crime has been committed you should report to your local law enforcement. In most situations, it won't be so clear-cut, and a referral to APS will be appropriate. There are offices in every county with your local Dept of Family Services office, or you can call 1-800-457-3659An on-call caseworker is available 24 hours/day. The information you as the physician provide is invaluable to help APS determine what to do. There is no legal risk to anyone who reports in good faith. If possible, be present when the local office holds the Adult Protective Team meeting at which they discuss your patient. You might be able to join by phone.

APS has many resources, including a Financial Abuse Specialist Team (FAST), which may be available to help handle cases of financial abuse. The Wyoming Dept. of Health Aging Division has useful information on its website, and an Elder Ombudsman is also available.

In summary, elder abuse and exploitation is more common than we would like to think, and with the growth in this population, you will see cases in your practice. Remember to be alert for warning signs; you are often the only person who has the ability to save your patient from abuse!

I would like to acknowledge the Governor's Task force for elderly, vulnerable adults for collecting the statistics used in the population trends section of this, and the Adult Protective Services unit for the language around abuse. The case studies came from Medicaid Quality reviews.

The Wyoming legislature did not go as far as a handful of other states which have enacted mandatory PDMP checks, or legislation establishing prescribing guidelines or limits on prescriptions of controlled substances. However, these legislative directives are not entirely off the table, as the 2018 legislature did create an Opioid Addiction Task Force, and charged the task force with considering a laundry list of issues, including both mandatory PDMP checks and prescribing limits. The full scope of the legislature's direction to the task force includes the following issues:

- Prescription drug monitoring programs and electronic prescribing systems, including [the WORx], and patient prescription history verification requirements;
- Grants relating to substance abuse education, prevention, treatment and recovery made available by the federal government, the State of Wyoming and other organizations;
- The availability and use of naloxone and other prescription drugs to counteract opioid overdoses;
- The quality and availability of treatment for opioid addiction and overdoses in Wyoming;
- Strategies to reduce the administration of opioids including promotion of alternative treatments, methods and possible limits on the quantity of opioids that a health care provider is authorized to prescribe;
- Authorized uses of opioids and any needed legal exceptions for authorized uses;
- Strategies for community engagement, including outreach to stakeholders and support for families of persons who have been impacted by opioids;
- Strategies for the state of Wyoming to undertake a focused, unified and cross agency approach relating to opioid education, prevention and treatment;
- Prescriber and dispenser education relating to opioids;
- Necessary law enforcement strategies and tools;
- Any relevant findings developed by the advisory council on palliative care; and
- Any other matter relating to opioids determined to be relevant by the task force

Civil Litigation

In addition to the legislative responses discussed above, the opioid crisis has prompted a variety of lawsuits. Several states and other governmental entities have sued pharmaceutical companies directly. Most of the suits revolve around allegations that the pharmaceutical companies knew about the addictive qualities of opioid pain killers, but concealed the potential effects from consumers in order to benefit financially; including allegations that pharmaceutical companies represented their products could be used safely for chronic pain management. In Wyoming, the Northern Arapaho Tribe and Carbon County have filed suits of this kind in federal court, and the Wyoming Attorney General has said his office is investigating filing such a suit on behalf of the State .

Litigation is not limited to proceedings against the pharmaceutical companies however. A surge of recent lawsuits shows that courts are

willing to impose liability on physician prescribers for over-prescription of opioid painkillers. In one notable case, a Missouri appellate court upheld a verdict against a physician and his employer awarding a plaintiff and his wife $1.7 million in compensatory damages and $15,000,000 in punitive damages where the physician's prescription of opioid painkillers resulted in severe opioid use disorder . The appellate court found that evidence admitted during the trial that repeatedly referred to a nationwide "opioid epidemic" was not irrelevant or prejudicial because such evidence had logical relevance to the case and established how the defendant physician's conduct compared to what others in the profession were doing under similar circumstances.

Best Practices

So what are Wyoming prescribers to do in the face of this opioid crisis and resulting legislative and litigation responses? There are many resources with best practices for prescribing controlled substances. These include the CDC's 2016 checklist for prescribing opioids for chronic pain , as well as the Wyoming Board of Medicine's 2009 Pain Management Policy and the Chronic Pain Management Toolkit also adopted by the Board of Medicine . With help from these resources, Wyoming providers can navigate the existing and emerging risks of the opioid crisis by undertaking the following activities within their practice:

- Become familiar with professional guidelines related to using controlled substances to treat pain, including long-term use to treat chronic pain.
- Ensure that all prescribers have adequate education and training about the risks and opioid addiction, abuse, and overdose.
- Consider providing patient education about the symptoms of overdose and the availability and use of opiate antagonists such as NarCan to respond to accidental overdose.
- Set policies within their practices related to prescribing opioids, including policies about checking the WORx before prescribing controlled substances, particularly for new patients.

1 CDC, NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, DIV. OF UNINTENTIONAL INJURY PREVENTION, Opioid Data Analysis, available at https://www.cdc.gov/drugoverdose/data/analysis.html (last visited June 10, 2018).

2 Huffington Post, The Young Woman Whose Addiction Story Touched Obama's Heart Just Died, (March 28, 2016) available at https://www.huffingtonpost.com/entry/jessica-grubb-obama_us_56f99db9e4b014d3fe23de54 (last accessed June 1, 2018).

3 SEA 60, http://www.wyoleg.gov/Legislation/2018/SF0078

4 Wyoming Public Media, Wyoming Attorney General Investigating Potential Opioid Lawsuit, (May 23, 2018), available at http://wyomingpublicmedia.org/post/wyoming-attorney-general-investigating-potential-opioid-lawsuit#stream/0 (last visted June 1, 2018).

5 Koon v. Walden, 539 S.W.3d 752 (Mo.App.2017).

6 CDC Stacks Public Health Publications, Checklist for prescribing opioids for chronic pain (March 2016), available at https://stacks.cdc.gov/view/cdc/38025 (last visited June 1, 2018).

7 Wyoming Board of Medicine Policy 40-01, Pain Management,(February 13, 2009), available at http://wyomedboard.wyo.gov/resources/board-of-medicine-policies-and-procedures, (last visited June 1, 2018).

8 Wyoming Rx Abuse Stakeholders, Chronic Pain Management Toolkit, available at http://wyomedboard.wyo.gov/resources/chronic-page-management-toolkit (last visited June 1, 2018).