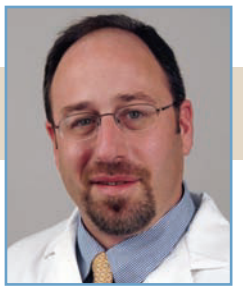
Medical Ethics



By Jonathan Evans, MD, MPH, CMD

For-Profit vs. Nonprofit: Are Ethics at Stake?

Neither status confers upon a nursing home any lesser or greater ethical obligation. Both provide services under contract.

Case One

A 79-year-old female resident of a for-profit nursing facility requires assistance with all activities of daily living because of left arm and leg weakness related to a stroke that occurred before she entered the facility 6 months ago. She originally regained some mobility with physical and occupational therapy, but those services were discontinued and she has lost function. She developed a sacral pressure ulcer.

She requires assistance with transfers and has had a number of incontinence episodes after pressing the call bell and waiting in vain for facility staff. On several such occasions, nursing assistants have apologized to her and said that the facility does not have enough staff.

She has become depressed, has experienced an unintended loss of 7% of her body weight since admission, and has become agitated at times, for which she is treated with quetiapine as needed. A referral for gastrostomy tube placement was offered. Quality measures on the medicare.gov Web site indicate that this facility is an outlier in the areas of functional loss, incontinence without a toileting plan, pressure ulcers, antipsychotic drug use, and weight loss.

Case Two

A 79-year-old man with Alzheimer's disease had been cared for at home by his wife until he wandered away and had to be found by police. He was taken to the nearest hospital where he was released the same day with a recommendation for nursing home placement.

The patient was deemed eligible for Medicaid but had not yet applied. The admissions director of a nonprofit nursing facility with 150 dually certified beds, owned by the church that the patient and his wife attended, indicated that the facility did not have an available bed, but that if the patient were hospitalized for 3 days it could take him.

Among the remaining nonprofit nursing facilities in the community, none accept Medicaid reimbursement. A nonprofit nursing home 25 miles away that did accept Medicaid has a waiting list of 3 years.

Discussion

The first case illustrates many residents' and families' worst fears: inadequate care resulting in patient harm in a facility that appears to be understaffed. Because the quality of care was poor but the company that owned the facility made a profit from it, patients, families, and even some facility staff believed that the company's desire for financial gain represented an unethical conflict of interest.

Is providing nursing home care for a profit unethical? Are nonprofit nursing facilities more ethical? Within the last month, a jury awarded $671 million dollars in a class action lawsuit to residents of a for-profit nursing home chain in California and their families, although the reward was then reduced to $50 million in a settlement. The primary allegation was systematic violation of state-mandated staffing standards. The second case illustrates that nonprofit nursing facilities, even those that are church or community owned, do not necessarily provide charity care. In fact, the majority of Medicaid recipients in nursing homes across the country receive this "charity" care from for-profit nursing facilities, despite the fact that Medicaid reimbursement to nursing facilities is generally decried as inadequate. The fundamental ethical underpinning of health care is beneficence, the obligation to do good for others. Concern about whether for-profit facilities are by their very nature as businesses potentially unethical is really a concern that the marketplace is fundamentally at odds with the ethics of caring for others.

The public has accepted that the primary responsibility of business is to act in the best interest of shareholders, even if that action is contrary to the best interests of the customer. Let the buyer beware. Society likewise accepts the law of supply and demand and its effect on prices.

The application of these same principles to health care is, beyond a certain point at least, unacceptable to society. Prices for health care services are therefore fixed. On the other hand, American society is sharply divided as to whether health care in general is a human right. Care is so expensive that hospitals and nursing homes cannot afford, without enormous subsidy, to provide free care to all those in need. The requirement that all residents have a source of payment is not considered unethical even for nonprofit nursing homes.

Many people are conflicted about profit in health care. While enamored with expensive, high-tech medical devices and procedures, society does not want nursing homes or other caregivers to make giant profits, especially for providing personal care. There appears to be a consensus that providers should put patient care first, that profits should be limited, and that self-interest should be tempered for the common good.

There is a sense that business ethics are not enough in this arena, so businesses must be constrained. Regulation and enforcement are necessary to rein in what is seen as the natural tendency of businesses.

People are also conflicted about regulation, however, and government involvement in private business. There is a current vocal disdain of government subsidies to either big businesses or the poor. Nor do many people want to pay more in taxes for health care infrastructure or services. For health care, then, a business may charge, but not too much. Whether for profit or not, a health care business should be honest, and it should be as efficient as possible to minimize cost.

Is Efficiency Bad?

Efficiency is output divided by expense. Maximum efficiency of human resources means every individual being maximally productive to meet the needs of others. The output then exactly equals the need.

While it is generally desirable that every individual work as efficiently as possible, problems arise when there is no reserve capacity to meet higher-than-normal need. That is, no additional workers. In other words, if every health care worker is completely occupied doing his or her job, then no one is available to help when someone gets sicker or has a sudden, unplanned need, such as for assistance getting to the bathroom.

If everyone in a health care setting is working at full capacity, then attending to an acutely ill patient requires that someone else's needs go unmet, at least for a time. Historically, health care settings have always built in excess capacity in order to meet sudden unexpected need. Excess capacity equals excess cost, however.

In a health care economy in which prices for services are fixed, there is tremendous pressure to control costs. The single biggest cost for health care providers is the cost of labor. Therefore, maximizing efficiency means minimizing labor costs by minimizing either wages per worker or minimizing the number of workers. While technology can increase productivity per worker up to a point, it is hard to imagine how technology could or should take the place of time spent caring for others.

Whether for profit or not, all nursing facilities that accept payment for caring for people are expected to meet their contractual obligations to provide all needed services and do so at a level of quality required under the contract. In other words, providing services for a fee is not charity. While charitable giving is discretionary, providing services under contract is not, regardless of the tax status of the provider.

When resources are scarce, the principle of justice requires that the resources be allocated fairly. An ethical problem arises when scarcity is created in order to minimize cost or maximize profit. Another problem arises when a culture of scarcity is created such that individuals tend to ration how much care they are willing to provide to another individual based on the perception of limited resources, rather than based on individual need.

Neither for-profit nor nonprofit status confers upon a nursing home any lesser or greater ethical obligation or morality. Virtually all are run as businesses that provide services under contract. Neither for-profit nor nonprofit nursing homes are required to meet all of society's long-term care needs, but they are required to do the best they can for the people who live within their walls.

The shift from custodial to postacute care in nursing homes is not a moral decision but an economic one. Nevertheless, the ethical requirement for nonprofit and for-profit facilities is the same: to meet the needs of the patient, to do good.

Business decisions must not have a negative influence on clinical decisions or clinical care in either setting. Likewise, the moral jeopardy is consistent: maximizing efficiency limits the capacity to care for those in greatest need, especially when the need is sudden and growing.

Minimizing the potential for ethical conflict between the needs of nursing facility residents and the economic needs of the facility itself is easiest when the financial incentives for the facility are in line with the goals of care. Aligning incentives risks escalating economic costs to society, however, in the current climate of scarcity.

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