

# CRAIN'S CLEVELAND BUSINESS

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Graying population turns attention on nursing homes

By HARRIET TRAMER

By the year 2020, it is expected that there will be a 71.8% increase to 1.5 million people ages 60 to 69 living in Ohio.

Even more significant is the projection that the 90 and older age group is expected to increase by 72.6%, from 59,443 in 2000, to 102,592 in 2020, according to a report from the Scripps Gerontology Center at Miami University.

And this so-called graying of the population could lead to more than a demographic shift. "So the number of older people with multiple disabilities who move into a nursing home and all the (legal and other) pressures that come with it will only increase," said Tim White, communication director for the Columbus-based Association of Philanthropic Homes and Services for the Aged, a trade association.

Indeed, some law firms and attorneys have practices that include a focus on litigation involving nursing homes and residents.

"The kinds of cases we handle do not evolve from things that might easily happen in the course of doing business," said Nathan Wills, a lawyer with the Cleveland-based Dennis Seaman & Associates Co. LPA.

"They might, for example, arise if a home evaluates somebody as being a fall risk but does not take measures to make certain they don't fall," said Mr. Wills, who noted that in Ohio, litigation involving these facilities is treated as a medical malpractice case, meaning a nurse or doctor must sign an affidavit of merit. "This person then falls and breaks a bone and because their health is not robust they deteriorate from that point."

Barbara Thomas, chief executive officer of Kendal at Oberlin, acknowledges that the threat of legal action remains an ever-present concern. But she said nursing homes would be exercising care and continually responding to new technologies even if lawsuits were not a consideration.

“I have been in the health care business for 30 years, and believe me, it is a different world now.” Ms. Thomas said. “Modern technology is a challenge, and we welcome it. But it requires ongoing caution. Training is extremely important. Nurses aides must, for example, be trained to detect any changes in a resident’s condition and report these changes to a supervisor.”

Rachel Kabb-Effron, who owns the Beachwood-based Kabb Law Firm, said that some nursing homes choose to work with professionals who monitor residents’ care. These individuals, such as the nurse on her firm’s staff, might, for example, notice that somebody is not wearing their MedicAlert bracelet before this oversight escalates into a serious injury.

Harry M. Brown, a lawyer with Benesch, Friedlander, Coplan & Aronoff LLP who has represented nursing homes for 30 years, said litigation pushes up nursing homes’ cost of doing business.

“Professional liability/general liability insurance, which protects nursing homes against claims evolving from employees’ negligence or other business-related matters, was only \$100 per bed a year in 1998,” Mr. Brown said. “This figure has now increased to between \$1,100 and \$1,200 a year and it might continue to rise at a time when Medicaid, Medicare and long-term care insurance payments are not increasing to the same degree.”

Blake Dickson, a lawyer with Dickson & Campbell LLC, whose practice is almost exclusively devoted to nursing home matters, argues that legal actions are placing these institutions under less financial jeopardy than some might imagine.

Because tort reform capped the non-economic damage awards for which these facilities can be found liable, the losses that nursing homes can sustain through litigation is limited. The number of nursing home beds remains much smaller than the number of people older than 65, who are the most likely consumers of these services. And this gap will likely widen as baby boomers age.

In 2006, there were 24,749 nursing homes beds within Lorain, Medina, Lake, Geauga and Cuyahoga counties, according to Shirley Ashbrook, ombudsman supervisor for the Cleveland-based Long Term Care Ombudsman, a program of Lutheran Metropolitan Ministry, supported by the Western Reserve Area Agency on Aging, United Way and other donations.

According to statistics compiled by the nonprofit agency, more than 10 times that many people older than 65 live in those areas.

From his perspective, Mr. Dickson said nursing homes have a major economic advantage: sheer numbers.

“They are on the happy side of the supply and demand dynamic, and they know it,” Mr. Dickson said. “If you do not like the way you are being treated in a store, you can go down

the street to another store. You cannot typically do that with a nursing home, particularly not in a small county where there might only be one available.”