Traumatic Brain Injury Rights Project
Overview

- Project Overview
- What is Traumatic Brain Injury?
- TBI Abuse and Neglect
- Project Components – Veteran Outreach
- Legal Strategies and Case Examples
GOAL: Protect individuals with military service and recreation or sports related TBI from abuse and neglect.

Equip for Equality Abuse Investigation Unit
Definition of TBI

- Centers for Disease Control and Prevention (CDC):
  - "...an injury to the brain caused by the head being hit by something or shaken violently. This injury can change how the person acts, moves and thinks."
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TBI Statistics

• 1.7 Million people in the US are diagnosed with a TBI each year.
  ○ Center for Disease Control

• 280,732 members of the military have been diagnosed with TBI since 2000.
  ○ Defense and Veterans Brain Injury Center

• Sports and recreation related TBI are on the rise.
  ○ Center for Disease Control
TBI Abuse and Neglect

- Persons with disabilities are 4 to 10 times more likely to become a victim of violence, abuse, or neglect than persons without disabilities. (Center for Disease Control).
  - Victimization can occur anywhere
  - Institutional settings - high risk locations

- General Contributing Factors
  - Unemployment or underemployment
  - Limited financial resources or limited control over financial resources
TBI Specific Factors

- TBI Specific – No two injuries are alike!
  - Executive control
    - Difficulty following rules due to impaired understanding
    - Impaired problem solving ability
    - Difficulty with anger management
  - Memory and perception
    - Reduced ability to understand risky situations
  - Substance abuse
  - Settlements from personal injury cases
  - Community misperceptions
TBI and Emotional Changes

- TBI can cause a wide range of functional short- or long-term emotional changes.
  - Depression
  - Anxiety
  - Personality changes
  - Aggression
  - Acting out
  - Social inappropriateness

- Also common for TBI symptoms to overlap with PTSD in veterans
Project Strategies

- Community Outreach
- Individual Legal Advocacy
- System-Wide Monitoring
Community Outreach

- Provide potential clients with information about self-advocacy, legal rights, and the services that are available to them through the project
  - Service Providers
  - TBI and Veteran Support Groups
  - Healthcare Facilities
Individual Advocacy Services

- Provide legal advocacy in individual cases of abuse and neglect
  - Ensure access to appropriate individualized services
  - Challenge the restriction of individual rights
  - Facilitate access to state and federal investigatory systems
  - Compel action by state agencies and service providers
  - Ensure access to the justice system
System-Wide Monitoring

- Monitor facilities serving individuals with TBI to prevent and address system-wide abuse and neglect
- As the Protection and Advocacy system, EFE has the right to:
  - Observe all areas where individuals receiving services have access,
  - Obtain reports related to abuse/neglect investigations, quality assurance and licensure,
  - Obtain reports related to restraint and seclusion, and
  - Obtain records related to individuals who have died.
Regardless of where a person with a traumatic brain injury is receiving services, he/she has the right to be free from abuse and neglect.
State agencies are responsible for investigating abuse, neglect, and exploitation of individuals with disabilities.

- Unaware of where to make the complaint
- Uncomfortable making a complaint
- Fear of retaliatory conduct by abuser
Reporting Abuse, Neglect and Exploitation

- For individuals age 18 or older in a Department of Human Services licensed or funded home call:
  - Office of Inspector General, Department of Human Services: (800) 368-1463

- For any individual in a nursing home, hospital or state-run developmental disability facility call:
  - Department of Public Health: (800) 252-2873
Reporting Abuse, Neglect and Exploitation

- For individuals 18 or older, including older adults, in a private domestic setting and individuals age 60 or older in the community call:
  - Department on Aging: (866) 800-1409

- For Children ages birth to 17 call:
  - Department of Children and Family Services: (800) 252-2873
Issue: Lack of Services In a Mental Health Facility

- **Neglect** - the failure to provide adequate medical or personal care or maintenance to a recipient of services, which failure results in physical or mental injury to a recipient or in the deterioration of a recipient's physical or mental condition. 405 ILCS 5/1-117.1
  - Inadequate programming
    - Vocational Programming
    - Recreational Activities
    - Educational Programming
Possible Solutions

- **Strategies for Self-Advocacy**
  - Request a meeting with treatment team
  - Take notes during meetings
  - Be mindful of tone – use words wisely
  - Keep an organized folder containing all correspondence and notes
  - It's ok to ask questions: Who is responsible for implementing service? Who can I ask for help with this in the future?
  - Request copies of notes/plan of actions from the meeting
Possible Solutions

- Resident Council Meeting
  - File a grievance and know how to follow-up on the grievance

- Negotiations – Have an advocate
  - Family member
  - EFE
  - Attorney

- Complaint to the appropriate state investigatory agency
  - EFE systemic monitoring/Intervention
Daniel

- Veteran with TBI had a heart attack as a complication from psychotropic medications.
- Daniel was concerned he was not receiving appropriate physical fitness support to recover from his heart attack.
- EFE reviewed the Daniel’s medical records.
- EFE negotiated with treatment team to add physical fitness plan to PWD’s treatment plan supported by physician and nursing staff.
- EFE provided Daniel with suggestions to review progress of his fitness goal each month at his care plan meeting.
Issue: Abuse/Neglect in a Nursing Home

- **Abuse** - any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. 210 ILCS 45/1-103.

- **Neglect** - a facility's failure to provide, or willful withholding of, adequate medical care, mental health treatment, psychiatric rehabilitation, personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness of a resident. 210 ILCS 45/1-11.
Possible Solutions

- **Complaint to Illinois Department of Public Health**
  - EFE oversight

- **Representation in care plan meetings**
  - Bring an advocate
  - Make a list of issue that need to be addressed
  - Request a copy of the updated care plan

- **Monitoring Visit**
  - Records review – negotiations with nursing home administration
  - Review of facility policies to determine if adequate protections from abuse and neglect are being provided

- **Private right of action**
  - Nursing Home Care Act - 210 ILCS 45/3-601
84 Year old Veteran with TBI contacted EFE from a state operated VA nursing home and reported neglect.

- Failure to provide:
  - Continence Care
  - Therapeutic Diet
  - Protection from Injury
  - Hydration

Tom was unaware of what his rights were in this situation and hesitant to speak up with facility staff.
Tom

• **EFE performed an unannounced visit to the facility**
  ○ Met with client
  ○ Reviewed records
  ○ Met with facility administrator to address immediate concerns

• **Represented client in care plan meeting**
  ○ Staff re-training on care plan needs
  ○ Additional support services added to care plan

• **Provided client with self-advocacy suggestions for the future**
Issue: Guardian Financial Exploitation

- **Guardianship:** Deprivation of the liberty of a person under disability because he or she cannot fully manage his/her affairs

- **Guardianship** – legal status that can only be established by a court order
  - Temporary guardian, Guardian of Person, Guardian of Estate (plenary or limited).

- **Temporary, Guardian of Person, Guardian of Estate**
  - Limited v. Plenary
Guardian of the Estate

- **Duties of the Guardian of the Estate**
  - Frugal care, management and investment of the estate
  - Annually account for income and expenses

- **Disbursements are made using a balancing of ward’s interests and best interests.**
Guardian of the Person

- Has custody of the Ward
- Shall make provision for their support, care, comfort, health, education, professional services, etc....
- Duty to maximize independence
  - “The guardian shall assist the ward in development of maximum self-reliance and independence.” 755 ILCS 11a-17(a).
Possible Solutions/Legal Strategies

- Complaint to the appropriate state agency
- Any person can contact the judge in the probate matter to express concerns or request termination/modification of the guardianship.
  - Any means
  - GAL Appointed
Possible Solutions/Legal Strategies

- **Restoration/Modification Proceedings. 755 ILCS 5/11a-20.**
  - The ward has the right to an attorney
    - EFE appointed Independent Counsel
    - EFE representing client’s “stated interests” rather than ward’s “best interest”
  - Standard of proof – Clear and Convincing
  - A physician’s report is not a requirement to restoration/modification, but any expert testimony is advisable.

- **Breach of Fiduciary Duty. 755 ILCS 5/24-18.**
John is a 51 year old individual with a TBI. He has a private company as guardian of person and a trust company as guardian of estate.

John contacted EFE after his guardian of person refused to discuss restoration with him.

John’s guardian of person has continued to charge John $115 an hour for guardianship services that John feels he no longer needs.

EFE was appointed independent counsel in John’s probate case and is now investigating whether John’s medical records support a petition for restoration.
Sarah contacted EFE after her guardians refused to provide her with an accounting of how her money was being spent and repeatedly threatened to put her in a nursing home.

Sarah was living in her own home at the time and had a substantial estate.

EFE successfully negotiated for the removal of Sarah’s guardians and the appointment of a successor guardian.

Sarah’s guardians recklessly used her money for their own benefit, buying lavish Christmas and wedding presents for family members and frequently using her money for their everyday purchases.

EFE has filed a motion for summary judgment on the client’s behalf claiming damages against her former guardians for over $140,000.00.
Mini Case Study

- A person with TBI receiving mental health services wants to review his/her medical records.
  - Right to review medical records
  - Right to have staff assist in understanding what is written
  - Right to submit a written statement to the records concerning any disputed or new information

740 ILCS 110/4
Issue: Involuntary Discharge

• Mini Case Study
  ○ Individual with TBI is discharged from a long term care facility in Illinois.
    ▷ Residents of long term care facilities in Illinois are guaranteed certain rights by state and federal law, including the right to continue living at the facility.
    ○ Individual can only be discharged for one of six reasons
      • Medical needs cannot be met by the facility
      • Health has improved so that the individual no longer requires the facilities services
      • Health or safety is at risk
      • Have not paid or are late paying the facility's bill
      • The facility closes
    ○ Individual has the right to appeal the discharge to the Illinois Department of Public Health to have a hearing.

210 ILCS 45/3-401; 42 CFR 483.12
Issue: Restraint

- **Mini Case Study**
  - Individual with TBI receiving mental health services is restrained.
    - Restraint can only be used in an emergency to prevent the individual from causing serious physical harm to him/herself or to someone else.
    - Restraint may never be used for coercion, punishment or discipline, or as a convenience for staff.

405 ILCS 5/1-125,

- Education/know your rights
- Report misuse of restraint to the appropriate state agency!
- Contact EFE
Thank you!

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