

Nursing home neglect, abuse, and mismanagement: What you can do if you or a loved one is harmed

Not so long ago, society generally and families in particular dealt with the physical and mental problems of aging loved ones differently than today.

To begin with, the need to care for the elderly was not always certain, because there weren't as many elderly people to care for. A [century ago, the average life expectancy](#) for men was only 48 years, and women 54. But because of advances in many areas, such as reduced deaths from accidents and improvements in nutrition and health care, [today those numbers are 65 and 75](#), respectively.

Another difference in elder care today is a reflection of changing family structures. Years ago, more tight-knit extended families could count on support from near relatives to look after members who needed help because of advancing age. Today it is common for children to live far away from their parents and grandparents, and for all of the adults in a household to need to work, making in-family care much less practical.

What these changes mean is that it is much more likely now than it used to be that you will know someone close to you who has age-related physical problems, mental problems, or both, and that you will be counting on people you at least hope are caring professionals to help them instead of keeping them at home. The proof is in the numbers: more than 800 nursing homes now operate in the state of Illinois alone.

Problems with resident care

The potential for harm, whether from carelessness or intent, to people who are especially vulnerable to physical and mental injury is one the [Illinois Department of Public Health](#) (IDPH) takes seriously. Its personnel perform random and unannounced inspections of all nursing homes. But the sheer number of these facilities makes it impossible to monitor all of them, all of the time. Even though the IDPH performs more than a thousand on-site nursing home inspections every year, it still annually receives about 6,000 nursing home-related complaints.

You can see the terrible possibilities of nursing home neglect and abuse by reading complaints in the public record. Every three months the IDPH publishes its [Quarterly Report of Nursing Home Violators](#), which describes what it refers to as "failures" that have caused potential or actual harm to nursing home residents. [If you review these failures](#), you will notice that the incidents fall into some general types of failures on the part of the nursing home's management, employees and facilities:

Types of failures

- *Failure to provide necessary services*, such as first aid, notification to medical providers, or special diets or medications.
- *Failure to supervise residents and staff*, including protecting residents from abusive staff or other residents.
- *Failure to follow policies*, including failure to train staff.
- *Failure to provide adequate personnel*.
- *Failure to provide adequate resident monitoring*, including allowing residents to leave facilities without the staff's knowledge.
- *Transport and transfer accidents*, such as falls from beds and wheelchairs.

In its own [investigation of group nursing homes](#), including 42 deaths in those facilities, the [Chicago Tribune's](#) reporters concluded that:

"...the vast majority of injuries and deaths are linked to inadequate staffing levels and failure to closely monitor fragile residents. Records show caregivers trying to cover up mistakes, failing to understand dangers of missed medications and underestimating the complex nature of disabilities..."

Residents fatally choked on improperly prepared food, succumbed to untreated bed sores and languished in pain from undiagnosed ailments. Other residents suffered forced indignities and loss of freedom... Some were mocked for their intellectual limitations, barricaded in rooms, abandoned in soiled clothing and deprived of food...

... all too often, vulnerable residents' health and safety has been left to unlicensed, scantily trained employees. Front-line caregivers failed to promptly call 911, perform CPR or respond to medical emergencies that resulted in death."

Consequences of these failures

- Broken bones.
- Pressure ulcers, bruising and other wounds.
- Choking.
- Septic shock and infections.
- Inadequate hygiene and grooming.
- Heart attacks and heart damage.
- Amputations.
- Illnesses (e.g., pneumonia).
- Death.

What can you do if your loved one is hurt or killed in a nursing home?

You have multiple paths that you can take to seek a remedy if you learn that a family member you have entrusted to a nursing home has suffered harm. They are not necessarily exclusive of each other. We'll take a brief look at how each works.

File a complaint with the IDPH

The [Illinois Nursing Home Care Act](#) governs the licensing and operation of nursing homes, including the obligations of nursing homes to their residents. Nursing homes that fail to uphold these duties make themselves vulnerable to complaints, which the IDPH investigates.

If the IDPH investigation finds that the nursing home has committed a violation of the Nursing Home Care Act, it will classify the violation according to a scale of severity:

- "AA" (the violation proximately caused a resident's death).
- "A" (the violation led to actual physical or mental harm to a resident, or creates a substantial probability of death or serious physical or mental harm).
- "B" (the violation makes it more likely than not that physical or mental harm to a resident will happen).
- "C" (the violation creates a substantial probability that "less than minimal" physical or mental harm to a resident will occur).

The IDPH website offers useful information on how you or your relative in a nursing home can [file a complaint](#) by mail, telephone or fax, including the kinds of information you will need to have. You can file a complaint anonymously if you choose.

The IDPH investigates all complaints. When it finds that a complaint has merit, it can take action on its own to require the nursing home to correct the deficiency within a definite time period, or punish the facility by imposing a fine (up to \$25,000 per violation or the most severe "AA" cases) or, in some cases, to take further steps like suspending, revoking or making the facility's operating license conditional (or closing an unlicensed facility), appointing a temporary manager, or restricting the facility from taking on more residents.

If the IDPH investigation finds in favor of the nursing home, you can appeal that decision within 30 days of being notified of the decision, in which case the IDPH will conduct a hearing to consider the appeal. Note that during the complaint process and during any appeal, you have the right to have an attorney represent you or your loved one.

One advantage to you of filing a complaint with the IDPH is that the burdens and associated financial costs of conducting the investigation (including issuing subpoenas to produce evidence, compelling witness testimony or taking deposition testimony), overseeing corrective actions and issuing punishments are all handled by the state. Conversely, however, the inherent disadvantage of this approach is that except for some limited reimbursement rights you or your

loved one who was subjected to the violation cannot receive money damages for the harm done.

Initiate a lawsuit under the Nursing Home Care Act

The Nursing Home Care Act expressly allows for residents or their representatives (including family members) to file a lawsuit under the Act based on any harm negligently or intentionally inflicted on the resident. Relief for a successful lawsuit can include actual money damages, attorney fees, or injunctive or declaratory relief. If the harm suffered by the resident was one example of a pattern of abuse of residents by the facility, the Act also authorizes class-action lawsuits that you or your loved one might be able to initiate or join.

Filing a complaint under the Nursing Home Care Act and commencing a lawsuit are not exclusive of each other. You can pursue both of these remedies, which are cumulative. Nor do you have to file a complaint before filing a lawsuit, or wait for your complaint to be resolved before filing suit. Moreover, any attempt at any time by the nursing home to get you to agree to waive your right to file a lawsuit under the Act, or to waive your right to a jury trial is void. The Act also forbids the nursing home from discharging, harassing, transferring or otherwise retaliating against your loved one in reaction to the filing a complaint or lawsuit.

One possible limitation on your right to take action in the form of a lawsuit is whether the Federal Arbitration Act applies to your case. If it does, then before filing suit you may need to complete the arbitration process first.

Consider other legal remedies

The lawsuit possibility under the provisions of the Nursing Home Care Act is not the only legal action that you can take. In the worst-case situation – in which your relative dies while under care – you can also consider a survival action, or a wrongful death action, or both.

- *Survival action:* The [Illinois Survival Act](#) allows for causes of action (including violations of the Nursing Home Care Act) that accrued before a plaintiff's death to survive the death of that person. So for example, if your loved one suffered physical injury at the nursing home before dying, you might still have a cause of action for the injury, pain and suffering and other damages on his or her behalf. The resident's estate is the plaintiff, and any award of money damages (including funeral expenses) based on a survival action go to the estate instead of directly to surviving relatives.
- *Wrongful death action:* Unlike a survival action, the [Illinois Wrongful Death Act](#) provides a remedy for harm that the relatives of the deceased resident have suffered, such as loss of emotional support and companionship. Note that wrongful death actions against nursing homes are subject to "[healing arts malpractice](#)" conditions, the most important of which is the requirement to consult with and obtain an affidavit from a qualified health professional stating that he or she has reviewed the underlying facts and concluded that the cause of action is "reasonable and meritorious."

You can pursue survival and wrongful death actions concurrently, because the plaintiff is different for each and their remedies are different. For example, damages for your emotional distress must be sought through a wrongful death action and not a survival action.

- *Remedies with other Federal and state agencies:* You might also find that other agencies, laws and regulations offer forms of relief aside from the ones we have discussed above, such as the Federal Nursing Home Reform Act of 1987, the Freedom of Information Act, and long-term care facility-related provisions of the Illinois Administrative Code. In some cases, the Social Security Administration or the Veterans' Administration may also have some involvement when you are seeking a remedy for nursing home neglect, abuse or facility-related problems.

Where should you start?

You can probably see by this point that the decision of what to do if your loved one is physically injured, emotionally abused, neglected or even killed in a nursing home is complex if for no other reason than the several options that may be available to you. One thing they have in common is that they have specific requirements you must comply with to lodge a valid complaint or to avoid your lawsuit being thrown out because of a proverbial "technicality" in the legal system.

The relevant statutes and regulations are long. In many ways they read like they were written by lawyers, for lawyers. Trying to navigate them on your own could cost you in missed opportunities for relief, or in losing claims that you might have prevailed upon if you had help from someone who already knows how nursing home laws work and how to use them.

Fortunately, you do not have to go it alone. If you consult with an [attorney familiar with nursing home law practice](#) – the earlier, the better – you can be better assured that your loved one who has been harmed will receive some measure of justice, and that your injuries which are measurable in the form of money damages will be compensated as much as possible. Having capable legal representation on your side (you can safely bet the nursing home will be represented by counsel) is not so much a cost to you in this situation, but an investment.

-30-

Sources:

- <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1225&ChapterID=21>
- <https://www.salvilaw.com/legal-services/nursing-home-abuse/nursing-home-regulations-illinois/>
- <http://www.dph.illinois.gov/topics-services/health-care-regulation/complaints>

- <http://www.dph.illinois.gov/topics-services/health-care-regulation/nursing-homes/regulation>
- www.medicare.gov/NHCompare/home.asp
- <https://chicagoinjurycenter.com/illinois-nursing-home-laws>
- <http://ilga.gov/legislation/ilcs/documents/075500050K27-6.htm>
- <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2059&ChapterID=57>
- <http://codes.findlaw.com/il/chapter-735-civil-procedure/il-st-sect-735-5-2-622.html>
- <http://u.demog.berkeley.edu/~andrew/1918/figure2.html>
- <https://www.cdc.gov/nchs/fastats/life-expectancy.htm>
- <https://www.riverbender.com/articles/details/illinois-department-of-public-health-releases-first-quarter-nursing-home-violations-19878.cfm#.WUGhZNpIBPF>
- <http://www.illinoishomepage.net/news/local-news/nursing-home-violations/636907790>
- <http://www.chicagotribune.com/news/watchdog/grouphomes/ct-group-home-investigations-cila-met-20161117-htmlstory.html>
- <http://www.roothlawfirm.com/>