

# 1-800-MALPRACTICE



# GUIDE BOOK



1-800-MALPRACTICE

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# *Section 1*



# *Types of Injuries*

## Section 1: Types of Injuries - Abuse

Most nursing homes provide good care for older loved ones. Unfortunately some cause needless suffering and/or death. The tragedy of nursing home abuse victimizes the most vulnerable individuals. Sadly, many nursing home residents are starved, dehydrated, over-medicated, or suffer painful pressure sores. Additionally, they may be isolated, ignored, or deprived of social contact and stimulation.

Many residents are able to report mistreatment, but unfortunately some cannot even describe what has happened to them. For this reason, it is important to look carefully for evidence of abuse.

The Illinois Nursing Home Care Act defines abuse as “any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility”. The major categories of abuse include physical abuse, emotional abuse, sexual abuse, exploitation, neglect, and abandonment.

### *Examples of elder abuse include:*

- Prolonged deprivation of food or water
- Use of physical restraints, like straps or belts
- Use of chemical restraints, like sedatives or sleeping medications
- Use of psychotropic or other medications for any purpose not authorized by a physician
- Excessive dosages of medication
- Withholding needed medication
- Confinement to a room or fixed location
- Slapping, pushing, shaking or beating



*Common signs of elder abuse include:*

- Unexplained injuries
- Inability of nursing home staff to give an adequate explanation
- Open wounds, cuts, bruises, welts, or bedsores
- Change bruises, pressure marks, broken bones, abrasions, and burns
- Bruises around the breasts or genital area can occur from sexual abuse
- Sudden change in alertness and unusual depression may be indicators of emotional abuse
- Sudden changes in financial situations may be the result of exploitation
- Bedsores, unattended medical needs, poor hygiene, and unusual weight loss are indicators of possible neglect
- Behavior such as belittling, threats, and other uses of power and control by spouses or those who should be in a position of trust are indicators of verbal or emotional abuse
- Non-verbal signs from the nursing home resident that something is wrong, such as unusual emotional outbursts or agitation; extreme withdrawal or lack of communication; unusual behavior, like sucking, biting, rocking, etc.; humiliating, insulting, frightening, threatening or ignoring behavior towards family and friends; desire to be isolated from other people
- Strained or tense relationships, frequent arguments between the caregiver and the elderly person are also signs.

It is important to remain alert and always carefully observe nursing home residents for signs of abuse. Your observation of warning signs could make a huge difference in an elder person's life.



## Section 1: Types of Injuries - Bedsores

Bed sores are also known as pressure sores or pressure ulcers. They are a common sign of nursing home neglect, since the elderly, wounded, and ill often rely on nursing home staff for repositioning because it is not easy for them to move on their own.

According to data from the Centers for Disease Control and Prevention, the rate of nursing home residents suffering from a pressure ulcer, or bed sore, can be as high as 1 in 10. Long-term residents are usually more likely to have pressure ulcers than those who have been in nursing homes for less than a year, and residents under the age of 64 years were more likely than older residents to have bed sores. 1 in 5 nursing home residents with recent weight loss suffered from a bed sore.

Bed sores occur when injuries to the skin and underlying tissues result from prolonged pressure on the skin. Bed sores commonly afflict people who are confined to bed, wheelchair users, and people who suffer medical conditions that impede their ability to change positions. People who are in poor health or who are weak, paralyzed, recovering after surgery, in a coma, or sedated are also at an increased risk for bed sores.

Bed sores most commonly develop over bony areas of the body, such as the heels, ankles, hips, and tailbone. They are caused by pressure against the skin, which limits blood flow to the skin and nearby tissues. Limited mobility makes the skin vulnerable to damage, as does age, since the skin becomes thinner, more fragile, elastic, and drier with time.

For wheelchair users, watch for bed sores on areas of the body that press against the wheelchair, like the tailbone, buttocks, shoulder blades, spine, and the backs of arms and legs. For those who are confined to bed rest, look for bed sores on the head, the rims of the ears, shoulders and shoulder blades, hips, lower back, tailbone, heels, ankles, and the skin behind the knees.

**There are four classifications of bed sores, ranging from least severe (stage 1) to most severe (stage 4).**

*The four classifications are of bed sores are:*

- Stage 1: A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved
- Stage 2: A partial thickness is lost and may appear as an abrasion, blister, or shallow crater
- Stage 3: A full thickness of skin is lost, exposing the subcutaneous tissues - presents as a deep crater with or without undermining adjacent tissue
- Stage 4: A full thickness of skin and subcutaneous tissues are lost, exposing muscle or bone

For wheelchair users and those who are confined to a bed, frequent repositioning to avoid stress on the skin is the best way to prevent bed sores. Taking care of ones skin, good nutrition, exercise, and not smoking can also decrease the risk of bed sores.

It is important to remain alert and always carefully observe nursing home residents for signs of abuse, including bed sores. Your vigilance could make all the difference for an elder person.



## Section 1: Types of Injuries - Choking

The death rate from choking is higher among people aged 65 or older than it is for any other age group. Recent data indicates that over 2,000 people aged 65 or older died from choking on food in the United States.

Choking is usually caused by dysphagia, which is defined as difficulty or discomfort in swallowing food. The dangers of dysphagia increase with advancing age. The likelihood of experiencing dysphagia is increased by wear on the esophagus that is associated with aging, and certain neurological or nervous system disorders.

There are two types of dysphagia: (1) esophageal dysphagia, which refers to the sensation of food sticking or getting hung up in the base of the throat or chest after swallowing; and (2) oropharyngeal dysphagia, which is a weakening of the throat muscles.

### *Signs and symptoms of dysphagia include:*

- Pain while swallowing (odynophagia)
- Inability to swallow
- The sensation of food getting stuck in your throat or chest or behind your breastbone
- Drooling
- Hoarseness
- Regurgitating food
- Frequent heartburn
- Having food or stomach acid back up into your throat
- Unexpected weight loss
- Coughing or gagging when swallowing
- Having to cut food into smaller pieces or avoiding certain foods because of difficulty swallowing

Forty to sixty percent of institutionalized older adults have identifiable signs or symptoms of a swallowing disorder. Taking this into consideration, nursing home staff must carefully monitor and supervise the food intake of residents. It is especially important to enforce diet restrictions and pay careful attention when residents susceptible to choking are eating.

In order to avoid choking, the resident first be examined by a physician to evaluate the severity of dysphagia. The physician will make a recommendation on what forms of food and what the resident should eat, which should be placed in the residents chart so that all caregivers are familiar with the residents eating plan. Failure to adhere strictly to the plan could result in choking.



## Section 1: Types of Injuries - Falls

Nursing home residents are susceptible to injuries from falls because they are weaker than other older adults. They usually reside in nursing homes because of a debilitating disease or condition or the inability to care for themselves. Elderly residents often have difficulty walking, have chronic medical conditions, suffer from memory problems, need help getting around, and have difficulty with activities of daily living. Other conditions that make falls more likely are muscle weakness, gait problems, improperly fitted or maintained wheelchairs, medications, poorly fitting shoes, poor foot care, improper use of walking aids, and environmental hazards such as wet floors, poor lighting, or incorrect bed height.

Approximately fifty to seventy-five percent of nursing home residents fall each year, and about 1,800 residents die from fall-related injuries annually. The Centers for Disease Control and Prevention estimates that for adults over the age of 65, twenty percent of deaths caused by falls occur in nursing homes. This is true even though only five percent of adults in this age group live in nursing homes. Thirty-five percent of those who suffer falls are residents who cannot walk. Falls often result in disability, functional decline, and a reduction in quality of life. Medical costs from falls are estimated to be \$34 billion annually.

The Illinois Council on Long-Term Care, a health care association representing over 200 nursing facilities serving 35,000 nursing home residents, developed a standardized fall protocol in cooperation with the Illinois Department of Public Health. The protocol recommends a fall-risk assessment and implementation of a fall prevention plan on every resident, as well as an incident report for every fall. The assessment includes checking for problems that increase the likelihood of falling. Although the protocol cannot exclude falls in nursing homes, its application is a step in the right direction.



*Nursing home falls can be prevented proactively by:*

- Assessing patients after a fall to identify and address risk factor and treat any underlying medical conditions
- Educating staff about fall risk factors and prevention strategies
- Reviewing prescribed medicines to assess their potential risks and benefits and to minimize use
- Making changes in the nursing home environment to make it easier for residents to move around safely, such as installing grab bars and raised toilet seats, lowering bed heights and installing handrails in hallways
- Providing patients with hip pads that may prevent a hip fracture if a fall occurs
- Providing exercise programs to improve balance, strength, walking ability, and physical functioning among nursing home residents
- Teaching residents who are not cognitively impaired behavioral strategies to avoid potentially hazardous situations



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## Section 1: Types of Injuries - Restraints

The Nursing Home Reform Act of 1987 is legislation that assures certain rights and protections for nursing home residents and patients. Among these rights and protections are “[t]he right to be free from chemical and physical restraints imposed for purposes of discipline or convenience and not required to treat the residents medical symptoms”. The guidelines for these regulations specify that a nursing homes responsibilities for preventing abuse also apply to practices and omissions which can lead to abuse, if left unchecked. The Department of Health and Human Services’ definition of inappropriate use of restraints is “chemical or physical control beyond physician’s orders or not in accordance with accepted medical practice”.

When the Nursing Home Reform Act was passed, restraining nursing home residents to manage wandering, agitation, or at the discretion of staff, was a widely accepted practice. However, the use of restraints is not only unnecessary, but dangerous as well. The Centers for Medicare and Medicaid Services has determined that “the use of physical restraints can cause harm including strangulation, loss of muscle tone, decreased bone density (with greater susceptibility for fractures), pressure ulcers, decreased mobility, depression, agitation, loss of dignity, incontinence, constipation, and in some cases, resident death”.

The Illinois Nursing Home Care Act regulates the use of both physical and chemical restraints in nursing homes. A physical restraint is defined as “any manual method of physical or mechanical device, material, or equipment attached or adjacent to a residents body that the resident cannot remove easily and restricts freedom of movement or normal access to one’s body”. A chemical restraint is defined as “any drug used for discipline or convenience and not required to treat medical symptoms”. Under the Act, restraints may only be used if ordered by a physician who documents the need for such restraint. Nursing home personnel are prohibited from using restraints as a means of punishment or for mere convenience. Furthermore, restraints may be used only with the informed consent of the resident, and only for specific periods of time and the least restrictive means necessary, unless in the case of an emergency, in which case the restraint is permitted only for a brief period in order to administer medical treatment. Nursing home residents must be advised of the right to have a person or organization notified of the restraint at the time restraint is initiated.

The Food and Drug Administration estimates that there may be at least 100 deaths or injuries annually associated with the use of restraints, with many of the deaths occurring when the patient is trying to get out of the restraint or while attempting purposeful behavior such as going to the bathroom. The Centers for Medicare and Medicaid Services determined that 2.2% of Illinois nursing homes had restraints as a clinical characteristic in 2011, and 1.6% in 2012. There were 15 nursing home surveys resulting in a citation for use of restraints in 2012. Although the numbers may appear to be small, it is important to be hyper-vigilant in order to ensure you or your loved one is not included in these statistics

*Nursing homes, in recognition of the dangers of restraint use, are increasingly using alternatives to restraints, including:*

- Personal strengthening and rehabilitation programs
- Use of “personal assistance” devices, such as hearing aids, visual aids, and mobility devices
- Use of positioning devices, such as body and seat cushions, and padded furniture
- Efforts to design a safer physical environment, including the removal of obstacles that impeded movement, placement of objects and furniture in familiar places, lower beds, and adequate lighting
- Regular attention to toileting and other physical and personal needs, including thirst, hunger, the need for socialization, and the need for activities adapted to current abilities and interests
- Design of the physical environment to allow for close observation by staff
- Efforts to increase staff awareness of residents’ individual needs - potentially including assignment of staff to specific residents in an effort to decrease difficult behaviors that might otherwise require the use of restraints
- Design of resident living environments that are relaxing and comfortable, minimize noise, offer soothing music and appropriate lighting, and include massage, art or movement activities
- Use of bed and chair alarms to alert staff when a resident needs assistance
- Use of door alarms for residents who may wander away

It is important that nursing home residents and loved ones remain educated about the dangers caused by the use of restraints, as well as alternatives to restraints. The hazards, risks and side effects of restraints most often outweigh the benefits of their use.



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## Section 1: Types of Injuries - Wandering and Elopement

Wandering occurs when a nursing home resident strays into an unsafe area and may be harmed. The North American Nursing Diagnosis Association (NANDA) defines wandering as “meandering, aimless, or repetitive locomotion that exposes the individual to harm; frequently incongruent with boundaries, limits, or obstacles”. There are numerous classifications of wandering, including elopement, environmentally cued wandering, reminiscent/fantasy wandering, tactile wandering, recreational wandering, and agitated purposeful wandering.

Approximately half of all nursing home residents suffer some form of dementia, most frequently Alzheimer’s disease. Since wandering is most often associated with Alzheimer’s dementia, it is no wonder that wandering is a problem in nursing homes. It is estimated that up to 31% of nursing home residents wander at least once, including on in five people with dementia, and that 11-24% of institutionalized dementia patients wander.

Wandering is associated with disorientation and difficulty relating to the environment, low social interaction, excessive pacing, and/or increased motor activity and results from cognitive impairment, including difficulty with abstract thinking, language, judgment, and spatial skills. Dementia patients with unmet physical or psychosocial needs, such as the need for toileting assistance or the need to find a place of safety or someone familiar, may be more prone to wandering. Goal-directed wanderers appear to be searching for someone or something, and non-goal directed wanderers have a short attention span and may wander aimlessly. The most dangerous type of wandering is elopement, in which a nursing home resident leaves the residence and does not return. Those who engage in elopement are distinguished by purposeful, overt, and often repeated attempts.

The risk of wandering increases with older age, male sex, poor sleep patterns, agitation, aggression, and a more socially active and outgoing premorbid lifestyle.

***Wandering creates additional risks, including:***

- Entering an area that contains safety hazards such as chemicals, fire hazards, tools, or other equipment that poses safety threats
- Entering an area that is physically unsafe, especially stairwells, poorly lit areas, construction areas, etc.
- Entering an area that has a person who poses a threat to the person's safety, including an irate or fearful fellow-nursing home resident, or another person who may exploit or otherwise harm the person who wanders
- Getting lost and not being able to find the way back, suffering from heat or cold exposure, drowning, or being struck by a car or other vehicle
- Suffering dehydration or other medical complications resulting from not having needs met

There are many tools used by nursing homes to assess wandering risk. Nursing homes that participate in Medicare or Medicaid are required to conduct a comprehensive, accurate assessment of each resident's needs within 14 days after admission, and every three months thereafter, unless a significant change in the resident's physical or medical condition prompts immediate reassessment. Since elopement most often occurs within 48 hours of initial admission, it is important to conduct the initial assessment immediately upon admission.

***Recommended preventative measures against wandering include:***

- Providing staff with proper training and support
- Close monitoring of residents with dementia
- Encouraging at-risk residents to sit at the table with other residents during mealtimes
- Facilitating social contact between at-risk residents and staff or low-risk residents
- Establishing controlled indoor and outdoor areas
- Posting signs to remind visitors not to assist residents in leaving the home
- Providing walking companions
- Use of transmitting devices to notify staff when alarms are activated
- Establishing a formal search procedure for staff
- Keeping photographs of residents on file
- Installing a surveillance system

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## Section 1: Types of Injuries - Wrongful Death

Approximately two million people reside in long-term care facilities throughout the United States. Of these, the state of Illinois has approximately 1,200 long-term care facilities that serve more than 100,000 residents. Each year, for every 100 long-term care facility residents, 35 will die and 37 will be admitted to a hospital. The average stay of elderly patients who die in nursing homes is just under two years.

The state of Illinois passed the Wrongful Death Act in 2007. The Act allows a spouse or next of kin to seek damages from the negligent wrongdoer for the “grief, sorrow and mental suffering” that has incurred as a result of a wrongful death. Next-of kin is defined as “those blood relatives of decedent in existence at decedent's death who would take decedent's property if decedent had died intestate.”

Prior to passage of the Wrongful Death Act, only damages for pecuniary injuries suffered from the death were allowed.

Claims under the Wrongful Death Act and the Illinois Survival Act are usually brought together. Under the Illinois Survival Act, a decedent's representative can sue for damages for wrongdoing to a decedent prior to the decedent's death.

At times, it is difficult to determine whether a long-term care resident has died of natural or unnatural causes. After all, the resident is usually in a facility because of poor health or injury. In Illinois, the statute of limitations for a wrongful death lawsuit is two years, or if the next of kin is a minor, two years after the minor turns 18. If you suspect your loved one has died as a result of nursing home neglect or intentional act, you should contact us immediately.

Common causes of wrongful death in nursing homes include serious infection, lack of resident supervision, falls, unsanitary conditions, neglect of a resident's basic needs, and medication errors.

Because the elderly are especially vulnerable, it is important to be watchful for signs of abuse and/or neglect. Your observation of warning signs could save an elder person's life.



## *Section 2*



## *Causes of Injuries*



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## Section 2: Causes of Injuries - Inadequate Precautions

Many people choose to live in nursing homes because it is safer than living alone. Because most nursing home residents have health and maintenance needs that are greater than the general population, it is important that nursing homes ensure that adequate safety practices are in place to provide the safest environment possible for residents.

The Institute of Medicine Patient Safety defines patient safety as “the prevention of harm caused by errors of commission and omission”. When shopping for a nursing home or assessing a current nursing home residence, it is important to evaluate the home for safety precautions that could enhance or save your loved one’s life.

### *Important safety precautions include:*

- 1. Background Checks:** Although a background check in itself does not determine employability, it is important that nursing homes screen potential staff for criminal convictions and/or prior instances of discipline for abuse
- 2. Safety Alert Systems:** Alert systems include cameras at facility entrances, locked security systems, check-in systems, secure exits in locked Alzheimer’s wings, laser alarms, cameras in resident rooms, emergency pull strings in bathrooms, call buttons for every bed, and alerting systems that buzz when at-risk residents get up without assistance
- 3. Proper Lighting:** Dim lighting can cause nursing home residents to trip and fall on unseen objects. Lighting that is too bright can similarly impede a residents vision and cause injury. Nursing homes should always ensure that lighting is properly placed and light bulbs are replaced in a timely manner
- 4. Proper Administration of Medication:** Nursing home residents are often on numerous medications, which increases the risk of overdose or dangerous medication interaction. It is important that nursing homes have a good organizational system for administering medications. Many homes cross-reference residents’ medications before administration and place daily doses of medications in sealed packets
- 5. Unobstructed Hallways:** Since many nursing home residents use walking aids, such as canes and walkers, to ambulate, it is especially important to keep hallways clear. Even small objects on the floor can cause a resident to trip and fall. For the same reason it is important that carpets and floor coverings are properly secured and in good condition

6. **Adequate Handrails in Bathrooms:** Many nursing home residents have difficulty maneuvering in the bathroom. Handrails and grab bars make showering and toileting easier and safer for residents

7. **Resident Abuse:** Before placing your loved one in a nursing home, contact the Illinois Department of Public Health and check for complaints against your nursing home. Ask the facility you are considering for references and ask facility directors if there have been any allegations of abuse, and if so, how the allegations have been handled.

8. **Infections:** Nursing home residents are especially susceptible to infections, often stemming from pressure sores, urinary catheters, and contagious diseases such as pneumonia. Make sure your facility has good sanitary practices in place and takes infections seriously

9. **Adequate Training:** Training in nursing homes is important. Because the turnover rate for nurse's aides is high, facilities are often staffed by new, inexperienced, and untrained personnel. Make sure training and supervision are a priority in your nursing home. Ask about turnover and training procedures, especially if your loved one has special needs.

10. **Wheelchair Safety:** Wheelchair users must be properly supervised. Wheelchair safety includes engaging locks when the resident is sitting in one area or is incapable of recognizing harm; parking wheelchairs where the ground is level; keeping residents in wheelchairs away from congested areas where they can be pushed or bumped; properly utilizing leg braces to make sure residents' legs will not easily catch on things; and keeping residents in wheelchairs away from fall hazards and unguarded stairways

11. **Proper Use of Restraints:** Federal and state legislation has made it illegal to use restraints, either physical or chemical, on a resident unless prescribed by a physician or in the case of an emergency. The risk of harm from use of restraints outweighs any benefits.

Not all accidents can be prevented, but proper precautions can significantly decrease the likelihood, risk, and severity of injury from accidents. Be sure to thoroughly investigate your nursing home for its emphasis and implementation of safety precautions.

## Section 2: Causes of Injuries - Poor Nutrition

Malnutrition is defined as poor nutrition resulting from an insufficient or poorly balanced diet, or from defective digestion or defective assimilation of food. Malnutrition is often the result of lipid disorders, protein/energy under-nutrition (PEU), or vitamin and mineral deficiencies. Nursing home residents with dementia, poor oral health, dysphagia (difficulty swallowing) or who take medications that irritate the stomach, are especially susceptible to malnutrition. The risk of malnutrition increases with aging.

Of the 1.7 million nursing home residents in the United States, 35-85% are malnourished, and 30-50% have substandard body weights. Inadequate nutrition, although a problem unto itself, has far-reaching effects in the elderly. It can result in:

- Infections (including urinary tract infections and pneumonia)
- Pressure ulcers
- Anemia
- Hypotension,
- Confusion and impaired cognition
- Decreased wound healing
- Hip fractures
- Weakness
- Fatigue
- Apathy
- Depression
- Inability to get out of bed

Malnourished residents require longer stays when hospitalized for acute illness, and are five times more likely to die in the hospital than their well-nourished counterparts. Additionally, malnutrition can contribute to decreased quality of life, something that is surely undeserved by people who should be enjoying their end years.

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Passed in 1987, the Nursing Home Reform Act (NHRA) addresses the prevention of malnutrition. Section (4)(A)(iv) of the Act specifies that skilled nursing facilities must provide “dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident”. The NHRA prompted implementation of the federally mandated Resident Assessment Instrument (RAI), a comprehensive health assessment that must be performed upon admission of each resident and at least annually. The RAI focuses on residents’ physical, cognitive, and psychosocial functioning, including malnutrition, weight loss, and the ability to feed one’s self, and must be completed at least annually, including when a significant change in health status occurs.

Adequate staffing and training, careful monitoring, and the preparation of appealing and nutritious meals are an important first step to preventing malnutrition in nursing home residents. If you suspect that your loved one is suffering from malnutrition as a result of nursing home neglect, call our office immediately.



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## Section 2: Causes of Injuries - Staffing Ratios

It's an unfortunate fact that nursing homes are notorious for staffing issues. These issues often include high turnover and insufficient staff. Causes for these issues include unrealistic work load, low wages, lack of supervision, insufficient training, and difficult staff schedules. Poor nursing home wages can also cause employees to lash out at residents. Because more staff naturally leads to better care of residents, staffing ratios are a good indicator of the quality of a nursing home. Illinois has a total of 761 certified nursing facilities, 87 of which were cited and fined in response to consumer complaints, according to recent reports.

Federal law mandates that Medicare/Medicaid certified nursing homes have a Registered Nurse Director of Nursing (RN DON) on duty for a minimum of 36 hours, four days a week, with at least 50% of scheduled hours between 7:00 am and 7:00 pm. In facilities with 100 or more occupied beds, there must also be an Assistant Director of Nursing (ADON) on duty a minimum of 36 hours, four days a week. For all shifts, there must be a licensed nurse designated as being in charge of nursing services when neither the DON or the ADON are on duty. The facility must have a minimum of one staff member awake and ready at all times. Aside from a 75-hour training prerequisite, there are no other requirements for nurse's aides, who provide most of the day-to-day care. Instead, nursing homes are required "to provide sufficient staff and services to attain or maintain the highest possible level of physical, mental, and psychosocial well-being of each resident", a guideline that is ambiguous at best. The Centers for Medicare and Medicaid Services (CMS) recommends an optimum staffing level of 1 hour RN time and 3 hours nurse's aide time per day per resident.

In July of 2010, the state of Illinois passed 210 ILCS 45/3-202.05, which addresses staffing ratios in nursing homes. The statute mandated a gradual increase of required staff hours over a period of four years, which culminated in the following final requirements as of January 01, 2014: 3.8 hours of daily nursing and personal care are required for residents needing skilled care, and 2.5 hours of daily nursing and personal care are required for a resident needing intermediate care. A minimum of 25% of nursing and personal care time is to be provided by licensed nurses, and 10% by registered nurses. The nursing staff counted in these numbers includes registered nurses, licensed practical nurses, and certified nursing assistants. Under some circumstances, therapists and therapy aides may also be counted. Other staff may be counted for residents who have a diagnosis of a serious mental illness.

*It is the residents who are most harmed by understaffing at nursing homes. Some likely outcomes of understaffing include:*

1. Residents becoming injured in falls
2. Residents developing bed sores
3. Residents' quality of life suffer
4. Residents suffer from improper nutrition
5. Omissions and mistakes in medication administration
6. Facilities become unsanitary
7. Patient belongings remain unwashed
8. Administrators utilize chemical restraints to control resident behavior and prevent complaints from being expressed

It is important to remain aware of nursing home staffing ratios and carefully observe nursing home residents for signs of abuse. Your awareness could make all the difference in an elder person's life.



## *Section 3*



## *Legal Remedies*

## Section 3: Legal Remedies - Illinois Wrongful Death Act

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
Next of Kin	The person or entity that caused wrongful death	Negligence

### WHAT YOU CAN RECOVER:

Money, benefits, goods, and services the decedent customarily contributed in the past and was likely to have contributed in the future

*Child: parenting services*

*Spouse: loss of consortium*

Under the Wrongful Death Act, 740 ILCS 180, a deceased's next of kin may bring legal action against the negligent wrongdoer that caused the death. Next of kin is defined as "those blood relatives of decedent in existence at decedent's death who would take decedent's property if decedent had died intestate", and normally includes a spouse, a parent (if the deceased was a minor child), or adult child of the deceased. The elements of a claim under the Wrongful Death Act are the same as those required for a general negligence claim under Illinois law: (1) that the defendant owed a legal duty to the deceased victim; (2) that the defendant breached the legal duty to the victim; and (3) that the named plaintiff in the wrongful death action sustained pecuniary damages as a result of the defendant's breach of duty to the victim. Under the Wrongful Death Act, a plaintiff is entitled to damages for their loss as next of kin, not for the deceased resident's loss. Unless a defendant is able to prove otherwise, the plaintiff is entitled to an assumption that he or she has suffered losses.



## Section 3: Legal Remedies - Illinois Survival Act

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
<i>Personal Representative</i>	<i>The person or entity that caused the death</i>	<i>Negligence</i>

### WHAT YOU CAN RECOVER:

Compensation for damages that the decedent could have recovered in a personal injury suit if he or she had survived, including medical expenses, lost earnings, property damage, and compensation for pain and suffering

A deceased's next of kin may pursue compensation for damages that the decedent could have recovered in a personal injury suit if he or she had survived under the Survival Act, 755 ILCS 5. In order to bring a claim under the Survival Act, an estate must be opened and a personal representative appointed for the estate. The elements of a claim under the Survival Act are the same as those required for a general negligence claim under Illinois law: (1) that the defendant owed a legal duty to the deceased victim; (2) that the defendant breached the legal duty to the victim; and (3) that the named plaintiff in the wrongful death action sustained pecuniary damages as a result of the defendant's breach of duty to the victim. The estate of the deceased is entitled to damages which the deceased suffered as a result of the negligence of the defendant, including medical expenses, lost earnings, property damage, and compensation for pain and suffering. Punitive damages are generally not permitted.

## Section 3: Legal Remedies - Medical Malpractice

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
<i>Injured party or personal representative</i>	<i>The person or entity that caused injury or wrongful death</i>	<i>Negligence</i>

### WHAT YOU CAN RECOVER:

Economic costs and compensation for pain and suffering

It is also possible to bring an action against a nursing home for medical malpractice. The elements of a medical malpractice claim are the same as for a general negligence claim under Illinois law: (1) that the defendant owed a legal duty to the deceased victim; (2) that the defendant breached the legal duty to the victim; and (3) that the named plaintiff in the wrongful death action sustained pecuniary damages as a result of the defendant's breach of duty to the victim. In Illinois, an affidavit of a medical expert must be attached to the complaint. The affidavit must contain a statement that the medical expert is knowledgeable of the relevant facts in the matter, that the medical expert has practiced or taught medicine in that particularized area of care within the last six years, that the medical expert has experience that qualifies him or her as an expert in that area of medicine, and that the medical expert has reviewed the medical reports applicable to the matter and has determined that the doctor or care provider against whom the action is being brought failed to provide a reasonable standard of care in that particular matter. Filing a complaint without an affidavit attached could result in dismissal of your case. Actual economic costs, as well as compensation for pain and suffering, may be recovered as a result of a medical malpractice claim.

## Section 3: Legal Remedies - Illinois Nursing Home Care Act

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
<i>Injured party, estate or personal representative</i>	<i>Nursing home owner or licensee</i>	<i>Intentional or negligent act or omission of agents or employees which injures the resident</i>

### WHAT YOU CAN RECOVER:

Actual damages and attorney fees

The Nursing Home Care Act, 210 ILCS 45 (NHCA), states that owners and licensees of nursing homes “are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident”. Under the Act, only the owner or licensee of the nursing home may be liable, and only a resident or his or her estate or representative (and not his or her heirs) has standing to bring a claim. Information on nursing home owners and licensees may be found on the Illinois Department of Public Health website. Under the NHCA, the owner and licensee of the nursing home are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. This includes violation of a resident’s rights under the “Patient Bill of Rights”, which generally provides basic quality of life standards, including the right to retain personal property, the right to choose his or her physician, and the right to be free of abuse and neglect by the facility’s staff. Because an affidavit from a medical expert is not necessary, filing an NHCA claim is often quicker and less costly than a medical malpractice suit. Only attorney fees and actual damages that were directly and proximately caused by the nursing home may be recovered under the Nursing Home Care Act. In *Vincent v. Alden Park Strathmoor, Inc.*, the Illinois Supreme Court ruled that punitive damage claims die with the resident.

## Section 3: Legal Remedies - How a Case Works

*Although we will focus our handling of each negligence or medical malpractice lawsuit to meet your unique circumstances and needs, you can generally expect the following:*

### **Filing the Complaint and Defendant Response**

We will file a complaint and serve it on the responsible party(ies), also known as the defendant(s). Once served with a copy of the complaint, each defendant has a certain amount of time to respond, usually 30 days. Defendants rarely admit fault and will most likely try to deny your claims and defend themselves. They may argue that your complaint is not valid or that someone or something else is responsible. Don't worry—this is normal. Your attorney will reply to each defendant's responses.

### **Discovery Phase**

Once your lawsuit is filed, we enter the discovery phase. This is when lawyers on both sides gather relevant information about your allegations. The purpose of the discovery phase is to prepare for trial and to gather information for settlement discussions between the lawyers. Discovery can take several months. Both sides will ask the other to answer written questions, produce documents, and participate in depositions. Your attorney will help you prepare your responses to any written questions and document requests, and will also go over likely deposition questions with you in advance and be present to assist you during the deposition. In addition to helping you respond to discovery requests, your lawyer will also make similar demands to the defendant(s) for information supporting your claim of negligence or medical malpractice.

### **Settlement or Trial?**

Before a trial starts, a defendant may offer to resolve the case by offering a monetary settlement. If you decline the settlement offer, it is possible that the defendant will make another offer during trial. Your attorney will negotiate on your behalf. Other settlement offers are made once the discovery phase is nearing completion. We will notify you every time a settlement offer is made. We will either recommend that you accept or reject these offers, and explain why. Of course, final decision to accept or reject the offer is up to you.

## **The Trial**

If one or more of the defendants refuses to offer a fair settlement, you may choose to go to trial. Many defendants will settle during the beginning of trial. Few cases go all the way to obtaining a jury verdict. The majority settle before or during trial. A jury trial usually lasts from three to six weeks. The trial process varies depending on where you file a claim. If you win and the defendant does not appeal, you will usually start receiving payments a few months after the trial.

## **Appeals**

If you win the trial, the defendant may file an appeal. The defendant will have a limited amount of time to file an appeal, usually between 30 and 180 days. This will delay any monetary award, but the defendant will need to post “bond” for the amount awarded while the appeal proceeds. If the defendant loses its appeal, you will start to receive payments. If the appeal is successful, the defendant may only need to pay a smaller amount or nothing at all. An appeals court generally accepts the facts of the case as the trial judge and jury interpreted them, including how credible the jury thought certain witnesses were. Usually the only thing an appeals court decides is whether the trial court correctly applied the law in the case. If a mistake was made that affected the result of the trial, the appeals court could order a new trial. In other cases, the appeals court will just correct the mistake without a new trial, such as when the amount of the award was calculated incorrectly. If your case is appealed, your attorney will be available to explain the process to you.



## *Section 4*



## *Frequently Asked Questions*

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## Section 4: FAQ's

### *What are some of the signs of abuse of nursing home residents?*

#### **Common signs of elder abuse include:**

- Unexplained injuries
- Inability of nursing home staff to give an adequate explanation of a residents condition
- Open wounds, cuts, bruises, welts, or bedsores
- Change bruises, pressure marks, broken bones, abrasions, and burns
- Bruises around the breasts or genital area can occur from sexual abuse
- Sudden change in alertness and unusual depression may be indicators of emotional abuse
- Sudden changes in financial situations may be the result of exploitation
- Bedsores, unattended medical needs, poor hygiene, and unusual weight loss are indicators of possible neglect
- Behavior such as belittling, threats, and other uses of power and control by spouses or those who should be in a position of trust are indicators of verbal or emotional abuse
- Non-verbal signs from the nursing home resident that something is wrong, such as unusual emotional outbursts or agitation; extreme withdrawal or lack of communication; unusual behavior, like sucking, biting rocking, etc.; humiliating, insulting, frightening, threatening or ignoring behavior towards family and friends; desire to be isolated from other people
- Strained or tense relationships, frequent arguments between the caregiver and the elderly person are also signs.

#### **I suspect that my loved one is being abused by nursing home staff. What should I do?**

The suspicion that your loved one is being hurt by those who are entrusted to their care is an awful feeling.

You can report suspected abuse by contacting the **Illinois Department Public Health**.

**Phone number:** (800) 252-4343

#### **Website for filing a complaint:**

[www.dph.illinois.gov/sites/default/files/licensecertificate/ccrcomplaintformfields3\\_1.pdf](http://www.dph.illinois.gov/sites/default/files/licensecertificate/ccrcomplaintformfields3_1.pdf)

You can also contact the **Long-Term Ombudsman Program** for your area.

#### **Search for contact information for your local ombudsman here:**

[https://www.illinois.gov/aging/ProtectionAdvocacy/LTCOmbudsmen/Documents/LTCOP\\_Contact%20List.pdf](https://www.illinois.gov/aging/ProtectionAdvocacy/LTCOmbudsmen/Documents/LTCOP_Contact%20List.pdf)

**A third option is to contact your local police.**

## Section 4: FAQ's

### **What should I do if I suspect that my loved one is at risk for falling?**

Nursing homes are required to conduct a fall-risk assessment and implementation of a fall prevention plan for every resident. Be sure that your nursing home has such a plan in place for your loved one. If there is no plan, request an assessment and ask to see the plan once the assessment is completed. If there already is a plan for your resident, make sure the nursing home is following it.

Talk to the nursing home director about factors that affect the safety of at-risk residents, such as environmental hazards like wet floors, poor lighting, incorrect bed height, and walking areas that are not clear.

### **What should I do if my loved one is suffering from bed sores?**

Talk to the nursing home director and/or staff about implementing a plan to minimize bed sores. Make sure your loved one is being repositioned frequently enough and correctly, especially if he or she uses a wheelchair or is confined to bed. Also, be sure that your loved one is getting exercise as well as good skin care and nutrition, whether on his or her own, or with the assistance of staff.

### **What should I do if I think nursing home staff is using restraints inappropriately?**

The Illinois Nursing Home Care Act (NHCA) prohibits the use of restraints unless ordered by a physician who documents the need for such restraint. Restraints may be used only with the informed consent of the resident, and only for specific periods of time and the least restrictive means necessary, unless in the case of an emergency, in which case the restraint is permitted only for a brief period in order to administer medical treatment.

If your loved one has been restrained, either physically or chemically, in violation of the NHCA, you may want to express your unhappiness with the nursing home director. If you are uncomfortable with this route, file a complaint with the Illinois Department of Health or your local long-term ombudsman.

If you feel that your loved one is in danger, call the police and make arrangements for the resident to move as soon as possible.



## Section 4: FAQ's

### **I noticed that my loved one often chokes while eating. What should I do about this?**

Choking is most often caused by dysphagia, which is the discomfort or difficulty in swallowing food. In order to avoid choking, your loved one should be examined by a physician to evaluate the severity of the dysphagia. The physician will make a recommendation on what forms of food and what the resident should eat. This recommendation should be placed in the resident's chart so that all caregivers are familiar with the resident's eating plan. Once the plan is in place, be sure to follow up to make sure it is being followed by nursing home staff.

### **How should I choose a nursing home for my loved one with a habit of wandering?**

When evaluating potential nursing homes, investigate whether the residence has preventative measures in place against wandering, such as:

- Providing staff with proper training and support
- Close monitoring of residents with dementia
- Encouraging at-risk residents to sit at the table with other residents during mealtimes
- Facilitating social contact between at-risk residents and staff or low-risk residents
- Establishing controlled indoor and outdoor areas
- Posting signs to remind visitors not to assist residents in leaving the home
- Providing walking companions
- Use of transmitting devices to notify staff when alarms are activated
- Establishing a formal search procedure for staff
- Keeping photographs of residents on file
- Installing a surveillance system

If the nursing home does not have preventative measures in place, you may want to look for a home that specializes in residents with dementia, who are at a greater risk of wandering.

## Section 4: FAQ's

### **What should I do if I suspect that my loved one is at risk for falling?**

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Talk to the nursing home director about factors that affect the safety of at-risk residents, such as environmental hazards like wet floors, poor lighting, incorrect bed height, and walking areas that are not clear.

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If your loved one has been restrained, either physically or chemically, in violation of the NHCA, you may want to express your unhappiness with the nursing home director. If you are uncomfortable with this route, file a complaint with the Illinois Department of Health or your local long-term ombudsman.

If you feel that your loved one is in danger, call the police and make arrangements for the resident to move as soon as possible.

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## Section 4: FAQ's

### **What should I do if I am worried that my loved one is suffering from poor nutrition at the nursing home?**

You have good cause to worry, because 35-85% of nursing home residents in the United States are malnourished. The cause of malnutrition is often difficult to determine because most residents are ultimately in control of what they eat. However, adequate staffing and training, careful monitoring, and the preparation of appealing and nutritious meals are an important first step to preventing malnutrition in nursing home residents.

Nursing homes are required to perform a comprehensive health assessment (called the Resident Assessment Instrument, or RAI) upon admission, at least annually, and when a significant change in health status occurs. This tool includes assessment of malnutrition, weight loss, and the ability to feed oneself. If you suspect that your loved one suffers from malnutrition or poor nutrition, request a RAI assessment. Following the assessment, monitor your resident to make sure the nursing home is following the recommendations from the assessment.

### **I don't think that my loved one is getting enough care or attention at the nursing home. What should I do?**

Although The Centers for Medicare and Medicaid Services (CMS) recommends an optimum staffing level of 1 hour RN time and 3 hours nurse's aide time per day per resident, Federal law requires nursing homes only "to provide sufficient staff and services to attain or maintain the highest possible level of physical, mental, and psychosocial well-being of each resident.

The state of Illinois requires 3.8 hours of daily nursing and personal care for residents needing skilled care, and 2.5 hours of daily nursing and personal care are required for a resident needing intermediate care, with a minimum of 25% of nursing and personal care time to be provided by licensed nurses, and 10% by registered nurses.

Make sure your nursing home resident is getting the number of hours and level of care required by law. If the nursing home is falling short, talk to the director about your concern and monitor your loved one carefully to make sure he or she is getting proper services. If the neglect rises to the level of abuse or results in injury, make plans for your loved one to move as soon as possible.

## Section 4: FAQ's

### **Who is responsible for regulating nursing homes?**

The Illinois Department of Public Health is the governmental organization responsible for licensing nursing homes and monitoring complaints. Visit their website, <http://www.dph.illinois.gov> to search for information about your nursing home, find out if a nursing home has been cited for violations, or to file a complaint. You may also call the Nursing Home Hotline at (800) 252-4343

### **What should I do if I suspect my loved one died as a result of nursing home neglect or abuse?**

File a report with your local police and contact us right away.

### **Where can I find Illinois nursing home laws?**

*Here are some links to Illinois nursing home legislation:*

#### **Nursing Home Care Act 210 ILCS 45**

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1225&ChapterID=21>

#### **Nursing Home Resident Rights**

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=021000450HArt%2E+II+Pt%2E+1&ActID=1225&ChapterID=21&SeqStart=4200000&SeqEnd=6350000>

#### **Wrongful Death Act 740 ILCS 180**

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2059&ChapterID=57>

#### **Probate Act of 1975 Survival Act 755 ILCS 5**

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2104&ChapterID=60>

### **Are there any federal nursing home laws?**

Yes, the 1987 Nursing Home Reform Act  
[www.law.cornell.edu/uscode/text/42/1395i-3](http://www.law.cornell.edu/uscode/text/42/1395i-3)

## Section 4: FAQ's

### What relief can I get if I sue the nursing home for my loved one's injury or death?

Depending on the circumstance, you (as next of kin), your loved one's estate, or your loved one's personal representative, could sue for actual monetary and/or pain and suffering damages, as well as attorney fees.

For a breakdown:

#### Nursing Home Care Act

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
Injured party, estate or personal representative	Nursing home owner or licensee	Intentional or negligent act or omission of agents or employees which injures the resident

#### Survival Act

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
Personal Representative	The person or entity that caused the death	Negligence

#### Wrongful Death Act

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
Next of Kin	The person or entity that caused wrongful death	Negligence

#### Medical Malpractice

WHO CAN SUE	WHO CAN BE SUED	WHAT YOU HAVE TO PROVE
Injured party or personal representative	The person or entity that caused injury or wrongful death	Negligence

## Section 5: Resources

### ILLINOIS DEPARTMENT OF PUBLIC HEALTH

*The Illinois Department of Public Health is the governmental organization that oversees licensure of nursing homes and investigates complaints*

**Website:**

[www.dph.illinois.gov](http://www.dph.illinois.gov)

**Nursing Home Hotline**

(800) 252-4343

**To file a complaint:**

[www.dph.illinois.gov/sites/default/files/licensecertificate/ccrcomplaintformfields3\\_1.pdf](http://www.dph.illinois.gov/sites/default/files/licensecertificate/ccrcomplaintformfields3_1.pdf)

**To search for information about your nursing home:**

[www.ltc.dph.illinois.gov/webapp/LTCApp/ltc.jsp](http://www.ltc.dph.illinois.gov/webapp/LTCApp/ltc.jsp)

**To view quarterly reports of nursing home violations:**

[www.dph.illinois.gov/topics-services/health-care-regulation/nursing-homes/violator-quarterly-reports](http://www.dph.illinois.gov/topics-services/health-care-regulation/nursing-homes/violator-quarterly-reports)

### LONG-TERM CARE OMBUDSMAN PROGRAM

*Each state has a long-term care ombudsman to advocate on the behalf of nursing home residents. This person makes sure problems get resolved and provides information on care facilities as well as the rights of residents.*

**Search for your local ombudsman:**

[www.illinois.gov/aging/ProtectionAdvocacy/LTCOmbudsmen/Documents/LTCOP\\_Contact%20List.pdf](http://www.illinois.gov/aging/ProtectionAdvocacy/LTCOmbudsmen/Documents/LTCOP_Contact%20List.pdf)

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## Section 5: Resources

### **Links to major nursing home legislation:**

#### **1987 Nursing Home Reform Act**

[www.law.cornell.edu/uscode/text/42/1395i-3](http://www.law.cornell.edu/uscode/text/42/1395i-3)

#### **Nursing Home Care Act 210 ILCS 45**

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1225&ChapterID=21>

#### **Nursing Home Resident Rights**

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?Doc-Name=021000450HArt%2E+II+Pt%2E+1&ActID=1225&ChapterID=21&SeqStart=4200000&SeqEnd=6350000>

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