

Florida Nursing Home Residents at Risk as Operators Demand Coronavirus Immunity

By Veronica Pamoukaghlian

The COVID-19 pandemic has taken a tremendous toll on America's elderly population. Nursing home residents have been hit the hardest, with 20,000 dead across the country as of mid-May. Many of those people have died due to negligence from staff and administrators. Naturally, families want to sue the culprits. Meanwhile nursing home operators are demanding immunity, often with success.

Prominent Elder Law attorney Brian Mahany explains, "If you live in Florida and watch the news, nursing home administrators are demanding immunity from lawsuits and even criminal prosecution. So far, 16 states have already caved to pressure from well-paid healthcare lobbyists."

Mahany has it right. States that have passed COVID-19 immunity laws for nursing homes include some of the hardest hit by the pandemic.

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New York is one of them. As residents get infected and die en masse at facilities all over NYS, legal liability for inadequate care has become a thing of the past. When residents need the highest quality of care to prevent Coronavirus infection, nursing home administrators get a free pass to disregard mandatory care standards.

IMMUNITY LAWS AND NURSING HOME HORROR STORIES

New York's Emergency or Disaster Treatment Protection Act was quietly passed on April

6, along with the state budget. While its champions claim it was meant to protect physicians and staff from frivolous lawsuits, the Act has provided unprecedented legal immunity for nursing homes, for as long as the state of emergency lasts.

Another state that has granted blanket immunity to nursing homes in Connecticut. Last March, Governor Ned Lamont signed an executive order to that effect. Out of 216 nursing homes in the state, 194 have had at least one resident or caregiver infected. About half of the people killed by COVID-19 in Connecticut were nursing home residents.

Other states have not fared much better. In New Hampshire, 66 out of a total of 114 fatal victims were living in nursing homes. Lobbyists haven't as yet had their way with New Hampshire. Still, Illinois, Alabama, Arizona, Georgia, Kentucky, Michigan, Mississippi, New Jersey, Nevada, Rhode Island, Vermont, Wisconsin, Massachusetts, and Louisiana, where immunity is automatic in the cases of natural disasters, have all shielded nursing home operators from litigation.

Trade organizations are currently pressuring Florida, Pennsylvania and California to grant immunity to long-term care facilities. It is outrageous that these efforts should continue, as sinister tales of bodies piling up outside nursing

homes make headlines around the country. The Life Care Center in Washington, an early North American epicenter of the pandemic, reported no less than 37 deaths.

Seventy residents died of COVID-19 at the Andover Subacute and Rehab Center in New Jersey, where 17 bodies were found in a horrific and unsanitary makeshift morgue. At California's Gateway Rehabilitation and Care Center, 33 caregivers and 69 residents got infected, and a total of 17 people died. These stories are, sadly, replicated all over the country.

According to Richard Mollot, an advocate for nursing home residents who heads New York's Long-Term Care Community Coalition, "to not have [the possibility of lawsuits] hanging over a nursing home's head," is akin to going down a very slippery slope.

Here in Florida, like elsewhere in the country, limited testing capacity, insufficient protective equipment, and sheer negligence have hampered efforts to curb the spread of the virus through local nursing homes.

Coronavirus infection is fast and relentless when large numbers of people share common living areas. Having successfully sued numerous nursing homes over neglect and abuse, lawyer Brian Mahany is in an ideal position to offer counsel during these

difficult times. "Giving nursing homes immunity from their poor decisions shouldn't even be up for discussion. . . Existing laws and negligence standards are more than adequate to protect nursing homes who are sued if they can show they followed all safety protocols," he explains.

Staffing shortages and inadequate hygiene at nursing homes are nothing new. But COVID-19 has exposed those issues, by making them deadlier than ever before. The companies that operate nursing homes are primarily for-profit and often owned by private-equity firms. These companies have cleverly disguised their quest for immunity as a move to protect nursing home staff from lawsuits.

The reality is that healthcare trade associations have contributed millions of dollars to political campaigns over the last few years, and now, they are coming to collect. The Greater New York Hospital Association, for example, spent \$7 million on various lobbying efforts in the state over the last three years, while the American Health Care Association, a national organization, spent \$23 million since 2014.

FLORIDA IMPOSES SANCTIONS ON NURSING HOMES WITH COVID-19 OUTBREAKS

Recently, Florida has found gross negligence and

preventable infection at several nursing homes. The state has imposed stringent sanctions on at least three of them, prohibiting new patient admissions and ordering one of the facilities closed. These are healthy signs that Florida is still strong in the face of aggressive lobbying groups, and that the families of nursing home residents in our state can still initiate legal battles to hold negligent staff and administrators accountable.

FAIR HAVENS CENTER'S ONE-STAR COVID-19 RESPONSE

Located in Miami Springs, Fair Haven Springs is a nursing home with 269 licensed beds. On May 8, the State of Florida prohibited the facility from taking in new patients. Regulators stated that there was a serious threat to residents' "health, safety, or welfare" and "immediate serious danger to the public health."

According to the state's order, Fair Havens staff failed to adhere to COVID-19 prevention standards, failing to remove PPE after exiting a dedicated COVID-19 isolation area, and often using only a mask and gloves to feed COVID-19 patients, instead of full-body PPE.

Upon inspection, state regulators found that "eleven (11) COVID-19 positive residents were placed in two-bed rooms with residents who were not

positive for the Coronavirus. . . At least fifteen (15) COVID-19 negative residents were exposed to COVID-19 due to the placement of the eleven (11) residents."

Other risky practices at the facility included not placing patients on quarantine after having had contact with someone who tested positive and failing to identify lunch trays coming from the COVID-19 isolation area.

Fair Havens Center has the lowest available overall rating on Medicare's Nursing Home Compare platform. The facility also has a one-star rating for health inspections. These ratings go from one star, which means "much below average," to five stars, which equates to "much above average." The platform is a great place to evaluate the quality of care provided by nursing homes across the U.S. Information can be found by entering the name, city or state of the facility.

CROSS LANDINGS HEALTH AND REHABILITATION CENTER LOSES ITS GOOD STAR

Located in Monticello, in the vicinity of Tallahassee, Cross Landings is home to 60 residents. On April 17, 2020, the State of Florida issued an order prohibiting the admission of new patients at the facility.

Cross Landings, the authorities found, had admitted patients

who were under investigation for COVID-19 infection but failed to place them in isolation. When caregivers started showing potential symptoms of the disease, they continued to provide care to residents. Health inspectors also noticed that staff failed to sanitize their hands and appropriately remove PPE after exiting COVID-19 isolation areas. Uninfected patients circulated freely through isolation areas, and infected ones were seen chatting with them, without protective masks.

Not surprisingly, many Cross Landings residents contracted the new Coronavirus. The CMS had given the facility a four-star rating on its last evaluation, perhaps a testimony to the importance of strict adherence to COVID-19 prevention guidelines. Cross Landings has a three-star rating on various consumer review sites.

SARA HOME CARE UNDER LOCK AND KEY

Hamstead-based Sara Home Care is an assisted living facility with 16 licensed beds. On May 8, 2020, state regulators shut down the facility until further notice.

Health inspectors observed numerous violations when they visited Sara Home Care. On the one hand, they were let in without any screening for COVID-19. In fact, no one was screened for high fever or other symptoms when entering the

facility.

A patient with a high fever and respiratory distress was not tested for COVID-19, there was scarce social distancing in common rooms, and patients who attended offsite activities were seen getting on buses without any protective equipment. Based on Sara Home Care's lengthy track record of violations, the authorities took the extreme measure of shutting it down.

DESPITE COVID-19 IMMUNITY LOBBY, REGULATORS CRACK DOWN ON BAD LONG-TERM CARE PROVIDERS

You can still sue nursing homes in Florida even if the government has declared a state of emergency. We don't know how long this will last or if the lobbyists will prevail. But there are some positive signs for victims and their families, even from states that have passed immunity legislation.

In New York, the State Health Department warned numerous facilities about their lengthy track records of unsanitary practices. The files of at least 13 facilities with more than 10 reported COVID-19 deaths contained recent citations for insufficient hand sanitation, lack of PPE, and exposure of patients' wounds to germs.

Some of these previous violations included nurse assistants who failed to wash their hands "after providing

incontinent care and disposing of the soiled linen," according to one Health Department inspector's notes.

If you or a loved one have become infected with COVID-19 at a nursing home, and you suspect negligent behavior was involved, you can sue for compensation. It is important to act now because lobbying efforts to secure immunity are becoming increasingly aggressive all over the country. To learn more about coronavirus and the law, visit chony.org. ■