



# How to Protect Your Loved One in a West Virginia Nursing Home

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# The Purpose of this Guide

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The law firm of Mani Ellis & Layne, PLLC, has prepared this guide, *How to Protect Your Loved One in a West Virginia Nursing Home*, for those who are in the process of choosing a nursing home for their elderly loved one.

You may be picking a nursing home for the first time, or you may be looking to move your loved one to a new facility. In either case, we believe our guide can help you to make the right decision.

We understand the difficult position that many families face when it comes to providing care for an aging parent, grandparent or other elderly loved ones. The decision to move your loved one into a nursing home may be the result of many months or years of debate, or it may be a decision brought on by a sudden change of circumstances such as a medical crisis.

Regardless of your reasons for moving your loved one into a nursing home, we believe your best choice will be an informed one. By carefully researching the nursing home you choose, you increase the likelihood of finding a facility where your loved one will be happy, healthy and safe.

**What You Will Find in Our Guide**

We start our guide by discussing the rights of nursing home residents and the responsibilities of nursing homes in West Virginia. This is important to know. You want to choose a home that will respect your loved one's rights and take its legally mandated duties seriously.

We then discuss the actual choosing of a nursing home. We provide an overview of factors that should go into your decision and a checklist that you can use as you research and visit different facilities.

We also introduce you to numerous online resources that offer information about nursing homes in West Virginia, including their ratings and their history of compliance (or lack of compliance) with state and federal regulations.

After you move your loved one to a nursing home, you will need to pay attention to how they are treated by those who own and operate the facility. This is why our discussion in this guide moves on to the issue of abuse and neglect of nursing home residents.

We describe how you can recognize abuse and neglect. We also explain why abuse and neglect often occurs in West Virginia nursing homes.

If you believe your loved one is being abused or neglected, we describe what you can do to report the mistreatment and what you can expect in an investigation.

We conclude our guide by discussing how a lawsuit can address abuse and neglect in a nursing home. We focus on the legal relief that a lawsuit can bring to you and your family, including compensation for any physical, mental and financial harm the mistreatment has caused you and your loved one to suffer. We also discuss how a lawsuit can protect other nursing home residents from harm in the future.

The law firm of **Mani Ellis & Layne, PLLC**, ultimately hopes that you and your family gain the sense of peace and security that comes from making an informed choice about your loved one's nursing home care. We also hope you come away with a good understanding of what you can do when abuse and neglect occurs.

# The Rights of West Virginia Nursing Home Residents

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When your loved one moves into a nursing home, his or her legal rights must be honored by the facility's owner, administrators and staff.



You should avoid choosing a facility with a history of violating residents' rights. If you believe your loved one's rights have been violated, you should take steps to report this mistreatment and move him or her to a new home as soon as possible.

The rights of nursing home residents in West Virginia are set out in the federal Nursing Home Reform Act's "Resident Bill of Rights" and the West Virginia Nursing Home Licensure Rule.

The following is a list of 20 rights guaranteed by state and federal laws that you should be aware of as you choose a nursing home or evaluate the care that your loved one is currently receiving in a facility.

**1. The right to be treated the same as any U.S. citizen.** The rights that a resident enjoyed while living in the community do not stop at the nursing home's door. A resident still enjoys the right to free speech, freedom to practice his or her religion and the right to vote in local, state and national elections. Also, a resident cannot be discriminated against on the basis of his or her race, religion, national origin, age, disability, sex or other protected status.

**2. The right to be fully informed.** Before or at the time of admission, a nursing home resident must be informed of his or her legal rights and given other mandatory information, including:

- How to apply for Medicaid and what Medicaid covers
- What the resident's financial obligation will be, including fees for services that are not covered by Medicaid or not included in the facility's basic rate (if there is any change in services or fees, the resident must receive a 30-day advance notice).

Additionally, a resident has the right to review the nursing home's past inspection results and complaint reports as well as the nursing home's plan of correction.

**3. The right to be free from neglect.** West Virginia law clearly states that a resident must receive "the necessary care and services to attain or maintain the highest practicable physical, spiritual, mental and psychosocial well-being ... in accordance with the comprehensive assessment and plan of care." In other words, a resident's condition should never deteriorate due to sub-standard care and treatment that he or she receives in a nursing home.

**4. The right to be free from abuse.** Your loved one has the right to be free from any form of abuse, including verbal, sexual, physical and mental abuse, financial exploitation, denial of privileges, corporal punishment and involuntary seclusion.

**5. The right to be free from unauthorized restraints.** A resident cannot be subjected to any chemical or physical restraints unless the restraint is:

- Authorized in writing by a doctor for a specific, limited time period, with consent from the resident or his or her legal representative, or
- Required due to emergency circumstances (such as the need to protect the resident from injuring himself or herself and others).

If a restraint is used, the nursing home must follow specific procedures, including documenting the specific reasons why the restraint is used.

**6. The right to voice grievances.** A resident must be informed of his or her right to file a complaint about any alleged abuse, neglect or exploitation. The resident must be provided with contact information for the West Virginia Long-Term Care Ombudsman Program and Department of Health and Human Services. A nursing home cannot mistreat a resident in retaliation for a complaint.

**7. The right to be free from unjustified use of psychotropic medications.** A major issue in nursing homes is the use of powerful antipsychotic medications such as Prozac, Paxil or Zoloft to control the behavior of residents with Alzheimer's disease or other types of dementia. West Virginia law requires a nursing home to first use a non-



medication approach. If a psychotropic medication is ordered, the resident must have a “diagnosed and documented condition justifying the use.” Additionally, no resident can be administered “unnecessary drugs.”

**8. The right to a legal representative.** If a resident suffers from a disability that prevents him or her from making medical decisions, a legal representative may be appointed. The legal representative must be consulted by the nursing home as required by law.

**9. The right to participate in a comprehensive care plan.** After an initial comprehensive assessment, a nursing home must develop a care plan that is aimed at meeting the resident’s medical, nursing, mental and psychosocial needs. A resident has the right to participate in the development of this plan. With consent, the resident’s family may participate as well.

**10. The right to be informed about medical care.** A resident has the right to be informed of his or her medical condition and about the care and treatment that he or she is receiving. Additionally, a resident has the right to review his or her medical records upon request.

**11. The right to determine medical care.** A resident may use the physician of his or her choice or seek a second medical opinion from a doctor he or she chooses. A resident may also refuse any treatment or refuse to participate in experimental research. A resident cannot be transferred or discharged due to his or her refusal.

**12. The right to execute an advance directive.** A resident may execute a living will or power of attorney for health care. If the facility cannot honor the advance directive, the resident must be informed and allowed to move to a new facility.

**13. The right to privacy, dignity and confidentiality.** A resident must be treated with consideration, respect and recognition of his or her dignity and individuality. Along those lines, a resident has the right to:

- Use and enjoy his or her own personal property
- Associate and communicate with any person of his or her choice
- Receive and send mail without it being opened or censored
- Conduct phone conversations in a reasonably accessible, quiet area.

Also, a nursing home must ensure the confidential treatment of a resident's personal, medical and financial records.

**14. The right to access and visitation.** A resident has the right to receive visits from a personal doctor, social worker, lawyer, ombudsman, nursing home inspector or any relative or non-relative of the resident's choosing. The nursing home must provide at least eight "visiting hours" per day. A resident can also refuse or terminate visits.

**15. The right to spend time with his or her spouse.** If a spouse visits a nursing home resident, the resident must be assured of privacy during the visit. If the spouses both live in the same nursing home, they have the right to share a room.

**16. The right to self-determination and participation.** A resident has the right to choose activities, schedules and health care that is consistent with his or her interests, assessments and plan of care. The resident has the right to receive reasonable accommodation of his or her needs and preferences. A resident may also:

- Interact with the community both inside and outside of the home
- Make choices about aspects of his or her life that are significant to the resident
- Retain or use personal clothing
- Participate in social, religious and community activities that do not interfere with the rights of other residents in the nursing home.

A resident may also join others in organizing, maintaining and participating in a residents' group or "council." The facility must listen to the group's views and make an effort to act upon grievances and recommendations.

**17. The right to manage one's own financial affairs.** A resident has the right to manage his or her personal funds. However, a resident can authorize, in writing, a nursing home to manage those funds. If this occurs, the resident is entitled to receive financial statements on a quarterly basis or upon request.

**18. The right to receive Medicare or Medicaid.** A nursing home cannot force a resident to waive his or her right to Medicare or Medicaid, and a resident cannot be charged for any services that are covered by those programs.

**19. The right to refuse to work.** A resident cannot be forced to perform services for the nursing home. If a resident does perform services, the nursing home must document the need or desire to do the work, describe the nature of the work in the resident's plan of care and pay compensation at or above prevailing rates.

**20. The right to remain in the nursing home.** A resident cannot be transferred or discharged unless it is:

- Necessary for the resident's welfare or to protect other residents and staff
- Appropriate because the resident's condition has improved
- Required because the resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home
- Required because the facility will soon cease to operate.

If a resident is transferred or discharged, the resident is entitled to receive notice at least 30 days in advance. The notice must explain the resident's right to appeal the transfer or discharge to the State Board of Review.

If a transfer or discharge occurs, the facility must provide sufficient preparation and orientation to the resident in order to ensure a "safe and orderly transition."

## The Right to Bring Legal Action

If a nursing home resident's rights have been violated, the resident and/or the resident's family have the right to report the mistreatment and take appropriate legal action, including the filing of a personal injury or wrongful death claim (if warranted).

### Sources / More Information

- [West Virginia Nursing Home Licensure Rule](#)
- [The 1987 Nursing Home Reform Act](#), AARP
- [Resident Rights and Protections](#), Office of Health Facility Licensure & Certification, West Virginia Department of Health & Human Services
- [Residents' Rights: An Overview](#), The National Consumer Voice for Quality Long-Term Care

# The Responsibilities of West Virginia Nursing Homes

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The main responsibility of a West Virginia nursing home's owner, operator, administrators and staff is to ensure that each resident's legal rights are fully honored, including the right to be free from abuse, neglect or exploitation.

Under West Virginia and federal law, a nursing home must provide a written description of these rights to a resident before or at the time of admission. The facility must also establish written policies and procedures regarding residents' rights and train its staff on how to properly carry out those policies and procedures.

The following are 20 specific responsibilities of nursing homes in West Virginia. You should focus on whether the home you are considering for your loved one (or the home where he or she currently lives) is meeting these responsibilities.

A nursing home must:

- 1. Provide proper care and service.** A nursing home has a basic duty to maintain or enhance a resident's quality of life and to provide medically related social services that

help a resident to attain or maintain the highest practicable physical, mental and psychosocial well-being.

**2. Conduct a comprehensive assessment and develop a care plan.** Within 14 days after a resident is admitted, the nursing home must fully assess a resident's ability to perform daily life functions. Within seven days of the assessment, the facility must develop a care plan that is designed to meet a resident's medical, nursing, mental and psychosocial needs.

**3. Maintain proper staffing levels.** At a minimum, a nursing home must have 2.25 hours of nursing personnel time per resident per day. There must be a "charge nurse" for each shift. Also, a registered nurse (RN) must be at the facility for at least eight consecutive hours every day of the week. When an RN is not there, an RN must be "on call."

**4. Conduct required background checks when hiring.** A nursing home must ensure that its staff members are licensed, certified and registered as required by law. Additionally, the facility must conduct a criminal background check of potential employees. After hiring, staff members should receive proper training, including special training related to working with residents who suffer from Alzheimer's disease or other forms of dementia.

**5. Ensure a resident's abilities in daily activities do not diminish unless unavoidable due to medical reasons.** A nursing home must provide appropriate treatment and

services to help a resident carry on everyday activities, including bathing, grooming, eating and drinking.

**6. Develop and implement written policies and procedures that bar neglect and abuse of residents and stealing of property.** The nursing home should make it clear to staff members that any misconduct will be promptly reported in accordance with state and federal laws.

**7. Treat and prevent pressure sores.** A nursing home must ensure that any resident who enters the home without “bed sores” does not develop them (unless it is medically unavoidable). Also, the facility must promote healing, prevent infection and prevent new sores from developing.

**8. Prevent spread of infections.** Policies and procedures should be in place to prevent the spread of infectious diseases, including skin conditions. For instance, a nursing home must require all employees to wash their hands after direct contact with residents.

**9. Follow proper procedures with use of restraints.** If there is no alternative to use of a physical or chemical restraint, a nursing home must follow a specific procedure before using one. For instance, the facility must document the reasons for the restraint and obtain written consent from the resident or legal representative. Any emergency use of restraints can last no longer than 24 hours without a doctor’s authorization.



**10. Never administer “unnecessary drugs.”** In other words, a nursing home cannot administer drugs in excessive doses, for a prolonged duration, without adequate monitoring or indications for its use or when the drug appears to have adverse consequences. Psychotropic drugs should never be administered for “off-label” uses. They should be used only when prescribed by a doctor. A facility must have a medication error rate of 5 percent or less and no “significant” medication errors.

**11. Provide an environment that is free of accident hazards.** As much as possible, a nursing home should be free of hazards such as those that lead to slips, trips and falls. If an accident occurs, a written report must be prepared and signed by the staff member who was in charge of the resident at the time.

**12. Provide proper beds, linens and laundry services.** A resident’s room must have a bed that accommodates his or her special needs as well as a nightstand, chair, closet and drawer space. Curtains should assure privacy. Pillows, mattresses and linens must be clean. A nursing home must also handle laundry services in a manner that prevents the spread of infections.

**13. Meet a resident’s nutritional needs.** Residents should receive three meals per day and be offered a snack at bedtime. The food must be “palatable, attractive and at the proper temperature.” The resident’s assessment should describe whether a special diet is needed. A feeding tube cannot be used unless a resident’s condition makes it unavoidable. The facility must also ensure that each resident has sufficient fluid intake so as to prevent dehydration.

**14. Meet all other special needs of resident.** In addition to his or her diet, a resident may have other special needs, including catheters, injections, respiratory care, foot care, prostheses and skin conditions. All medical equipment must be sterilized and in good working order.

**15. Provide proper solid waste and bio-hazardous waste disposal.** Garbage should be removed from the facility daily or more often if needed. All bio-hazardous waste must be disposed in accordance with state and federal standards. Additionally, the home's sewage system must meet code requirements.

**16. Comply with fire code regulations and have emergency preparedness.** For instance, the home should have smoke detectors, fire extinguishers, emergency exits and sprinkler systems. The facility should also have a plan for responding to a fire, natural disaster or other emergency situations such as the wandering away of a resident.

**17. Carefully manage and protect a resident's funds and personal property.** If a nursing home is authorized to manage a resident's funds, the home must administer those funds as directed and provide an accounting of the funds on a quarterly basis or upon request. A resident's funds cannot be commingled with the facility's operating funds. Also, the nursing home should take reasonable steps to keep a resident's personal possessions secure.

**18. Develop and implement a procedure for registering and responding to complaints.** A staff person should be responsible for receiving complaints, and there should be a procedure for relaying the complaint to an administrator. Investigations must be

conducted, and the results must be communicated to the resident or legal representative. All residents should be informed of the complaint process, including the right to file a complaint without fear of reprisal.

**19. Report investigations of alleged violations.** If a nursing home resident's rights are alleged to have been violated, the nursing home must conduct an investigation and report the results of that investigation within five days of the incident. While the investigation is taking place, the facility should take steps to prevent a resident from suffering any further abuse.

**20. Refrain from discrimination in any form.** Regardless of how a resident pays for a nursing home – personnel assets, private insurance or Medicaid – a nursing home must give equal treatment in terms of admission, transfer, discharge and provision of services.

### **Take Action If a Nursing Home Fails to Meet Its Responsibilities**

If you have reason to believe that a nursing home in West Virginia is failing to meet its legal responsibilities, and your loved one has suffered harm as a result, you should report it immediately and speak with an attorney.

#### **Sources / More Information**

- [West Virginia Nursing Home Licensure Rule](#)
- [The 1987 Nursing Home Reform Act](#), AARP
- [Resident Rights and Protections](#), Office of Health Facility Licensure & Certification, West Virginia Department of Health & Human Services

## Choosing a New Home for Your Loved One

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The Kaiser Family Foundation reports that more than 9,600 people live in certified nursing facilities in West Virginia. As the population in our state and across the country ages, that number will certainly grow. In fact, the U.S. Census Bureau projects that the number of people age 65 and over in the U.S. will nearly double within the next 35 years.

As a result, more and more families in our state find themselves facing the difficult choice of moving a loved one into a nursing home. You are not alone in having to make this difficult decision.

In this section, we discuss the considerations that should go into choosing a facility that will meet your loved one's needs and provide a safe, comfortable living environment.

### **Consider Nursing Home Alternatives**

A nursing home is similar to a hospital. The home usually has a nursing staff on the site around the clock, including at least one registered nurse for eight hours per day.

The facility provides medical care and treatment in addition to assisting residents with daily living activities such as bathing, grooming, getting dressed and eating. A nursing home may also have a special unit that is dedicated to caring for residents with memory loss.

If your loved one suffers from a medical condition, a nursing home may be the only option. However, there are many other types of facilities you may want to consider. Depending on your loved one's needs (and available finances), an alternative to a nursing home may be more suitable. These alternatives include:

- **In-home care** – If your loved one wishes to remain in his or her home, home health care is an option to consider. A licensed nurse or home health aide may help your loved one with daily living and housekeeping as well as attend to his or her medical needs.
- **Independent living communities** – If your loved one can live on his or her own, an independent living community may be ideal. Typically, these communities consist of homes, townhomes, condos or apartments, with age restrictions on who can live in the community (i.e. for ages 60 and older). The community may feature a pool or clubhouse. It may also offer maintenance, security, laundry, transportation and other services.
- **Assisting living residence** – In this type of facility, a resident can maintain an independent lifestyle while also receiving hands-on care and support. For example, a resident may live in his or her own private apartment while, at the same time,

receiving help with bathing, dressing, making meals, laundry and transportation. The facility may also provide limited medical services.

- **Memory care facility** – If your loved one suffers from Alzheimer’s disease or another form of dementia, a memory care facility may be the best option. Memory care may be provided within a nursing home or in a separate facility. If needed, your loved one should receive care and treatment from nurses and other professionals who have been specially trained to help those who suffer from memory loss.

### **Use Ratings and Other Online Resources**

You can use the Internet to learn considerable information about nursing homes in the area where you are looking and, perhaps, create a list of facilities you would like to visit.

First, you can go to the West Virginia Department of Health and Human Services’ [online directory of licensed nursing homes](#). The directory lists 129 facilities. You can tailor your search to homes that accept certain types of payment such as Medicaid, have a certain number of beds or are located within a specific county or zip code radius.

When you click on a home listed on the directory, you can find the results of the state’s latest health inspection survey and the results of investigations that followed complaints.

Next, you can check on how the nursing homes on your list have been rated by going to [Nursing Home Compare](#). These ratings are prepared by the federal government and include profiles of every nursing home in West Virginia that is certified by the Centers for Medicare & Medicaid Services (CMS).

Each home receives a rating between one star (far below average) to five stars (far above average). The star ratings are based on health inspection results, staffing and quality measures such as the percentage of a home's residents who have received recommended care such as flu shots, or have experienced falls resulting in injury, experienced depressive symptoms or suffered bed sores. You can search facilities by name, state, city or zip code.

You can also find a list based on the CMS ratings by going to [U.S. News & World Report](#). Unfortunately, as this site points out, only 10 percent of the nursing homes in West Virginia have earned an overall five-star CMS rating.

Another helpful online resource is [Nursing Home Inspect](#) by the ProPublica watchdog organization. The site uses CMS data to show nursing homes that have been cited for deficiencies, or violations of federal regulations. It also shows the amount of fines a facility has been ordered to pay and whether the facility's Medicare and Medicaid payments have been suspended.

## Visit the Facility

The last (and possibly most important) step in your search for a nursing home is to actually visit the facility with your loved one. When you visit, consider:

- **Getting there** – Is the facility located close enough to your loved one’s family and friends? Will it be difficult or convenient to make visits?
  
- **First impressions** – Upon first glance, does the facility look like a clean and attractive place? Is there any worn furniture, frayed carpet or cluttered hallways? Is it dark or well-lit? Do the rooms look comfortable? Do you notice any odors? Is it quiet or noisy? Is there an area where residents can enjoy the outdoors?
  
- **Resident-staff interaction** – Does there seem to be a warm or cold relationship between staff and residents? Are staff members polite? Do they treat residents with respect?
  
- **Meals** – Is the food properly cooked and palatable? Are utensils clean? Is it an inviting dining area? Can you imagine yourself eating here every day?
  
- **Safety and security** – Do you see smoke detectors, sprinklers and fire exits? Is there a security guard, surveillance system or other way the nursing home monitors who comes in and out of the facility?



- **Your loved one's reaction** – Ultimately, your loved one's reaction to the nursing home is the most important factor. If he or she simply does not feel “at home” in the facility, you should move on in your search.

We suggest that you take a copy of our 25-point checklist with you on your visit so that you don't forget important details. Make sure to write down questions that you would like to ask the home's staff and residents if you decide to make a second visit.

#### Sources / More Information

- [Total Number of Residents in Certified Nursing Facilities](#), Kaiser Family Foundation
- [An Aging Nation: The Older Population in the United States](#), U.S. Census Bureau
- [Your Guide to Choosing a Nursing Home or Other Long-Term Care](#), Centers for Medicare & Medicaid Services
- [Choosing the Right Nursing Home](#), AARP

# Checklist: Making the Right Choice for Your Loved One and Family

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Choosing a nursing home is not easy. You want to find a facility that does more than meet basic standards. You want it to be a place where your loved one will be safe, receive outstanding care and made to feel truly at home. It may take extensive research and numerous visits (and repeat visits) to many different nursing homes before you finally arrive at a destination.

We hope our 25-point checklist will help to guide you through the process. We suggest that you ask the following questions about each facility that you research and visit:

1. Is the nursing home Medicare-and/or Medicaid-certified and licensed to operate in the state of West Virginia?
2. Does the nursing home have a history of complaints and deficiencies?
3. Is the facility conveniently located, making it easy for friends and family to visit?
4. Is the nursing home clean, well-lit and free of unpleasant odors?
5. Is the nursing home quiet or noisy?
6. Is the temperature of the home comfortable and appropriate for the season?
7. Does the nursing home have appropriately placed handrails in hallways and bathrooms, and are areas of the home accessible by wheelchair?

8. Is there an outdoors area where residents can sit or enjoy exercise?
9. Do the nursing home's rooms look comfortable and private?
10. Does the nursing home have an adequate security system?
11. Does the facility have smoke detectors, sprinklers and emergency exits?
12. Does the nursing home have response plans for fires, natural disasters and other emergencies such as a resident wandering away from the facility?
13. Does the nursing home have a sufficient number of nurses who are on-duty or available on-call?
14. Do staff members treat residents with warmth and respect?
15. Is there a high turnover rate in staff and administrators?
16. Do residents have reasonable access to a telephone where they can hold conversations in private (or, perhaps, access to a computer for sending e-mails)?
17. Does the nursing home serve three meals per day at appropriate hours and provide a daily snack to residents?
18. Is the food cooked to the right temperature and pleasant to taste?
19. Does the nursing home cater to a resident's special dietary needs?
20. Does the nursing home offer residents a program of activities that promote physical, mental and social well-being?
21. Does the nursing home have a residents' council that meets regularly and receives cooperation from the home's staff and administrators?
22. Does the nursing home allow residents to have meaningful participation in the development of care plans?
23. Does the nursing home help residents to see the doctor of their choice by allowing on-site visits or arranging transportation to the doctor's office?
24. Do residents receive annual flu shots and regular hearing and vision tests?
25. Is there an arrangement between the nursing home and a nearby hospital for handling medical emergencies?

# How You Can Recognize When a Loved One Is Being Mistreated in a Nursing Home

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Unfortunately, the nursing home that you and your loved one select may end up being the wrong choice. Mistreatment of elderly and disabled residents in nursing homes and other long-term care facilities is a serious, widespread problem in West Virginia.

According to its most recent, available annual report, the state's Long-Term Care Ombudsman Program responded to 980 complaints over the course of single year, including 759 that involved nursing homes. Out of those complaints, 18.7 percent concerned "resident care." Willful mistreatment of residents, financial exploitation and environment issues were among the other types of complaints.

### Leading Types of Complaints to WV Long-Term Care Ombudsman Program

Complaint Type	No.	Percentage
Resident care	142	18.7%
Autonomy, choice, exercise of rights	107	14.1%
Admission, transfer, discharge	103	13.6%
Family abuse issues	76	10.0%
System issues (i.e. bed shortages)	53	6.9%
Environment (cleanliness, pest infestation)	51	6.7%
Rehabilitation	39	5.1%
Financial exploitation/personal property loss	37	4.9%
Dietary	34	4.5%
Willful mistreatment of residents	28	3.7%

Even though the majority of those complaints (58.4 percent) were resolved to the satisfaction of the resident or the one who filed the complaint, a high number (17 percent) were only partially resolved or not resolved to the satisfaction of the resident or complainant.

As the National Center for Elder Abuse notes, many cases of elder abuse and neglect, including within nursing homes, go unreported due to the victim's fear of retaliation or lack of physical or cognitive ability to make a report.

This is why you, as the relative of a nursing home resident, can play a major role in protecting the health and safety of your loved one and others within a facility. When you visit your loved one in a nursing home, you can look for signs of abuse and neglect.

If you detect any signs, you should immediately report the mistreatment and consult with an attorney to ensure your loved one's rights are protected.

Based on statistics compiled by the National Ombudsman Reporting System, the most commonly reported types of mistreatment in nursing homes are:

Type	Percentage
Physical Abuse	18.7%
Psychological Abuse	14.1%
Neglect	13.6%
Sexual Abuse	10.0%
Financial Exploitation	10.0%

Signs that your loved one is being subjected to these different types of mistreatment include:

### Physical Abuse

The intentional infliction of physical harm on a resident, including kicking, slapping, pushing, pinching or excessive use of chemical or physical restraints.

#### Signs

- Bruises, cuts, bleeding and other injuries
- Burns and abrasions
- Flinching away from contact
- Marks or rope burns on wrists and ankles

- Over-medication indicated by drowsiness or an inability to communicate
- Listlessness or unresponsiveness.

### **Psychological Abuse**

Screaming, yelling, using abusive language and profanity and subjecting a resident to humiliation, threats and insults are types of psychological, or emotional, abuse.

#### **Signs**

- Constant crying with depression or anxiety
- Refusing to communicate
- Odd behavior, including withdrawal
- Sleep problems (too much or too little sleep).

### **Neglect**

The failure to provide an acceptable level of medical and personal care to a resident or to provide a safe, hazard-free living environment.

#### **Signs**

- Bed sores and infections
- Injuries from falls
- Wandering or elopement from the facility
- Lack of hygiene
- Sudden weight loss due to malnutrition
- Dry, flaky skin due to dehydration
- Dirty bedding or clothing.

**Sexual Abuse**

Forcing a resident to engage in a nonconsensual sexual act or to witness a sexual act or view pornography.

**Signs**

- Bruising on the breasts, buttocks or genital areas
- Anal or vaginal bleeding
- Genital infections or sexually transmitted disease
- Changes in mood and behavior.

**Financial Exploitation**

The taking of a nursing home resident's financial assets or personal property, including gaining access to bank accounts, stealing valuable items or arranging changes to the resident's will.

**Signs**

- Unusual account withdrawals (typically in round numbers like \$100 or \$500)
- Increased credit card charges
- Writing checks or making account withdrawals that result in overdraft penalties
- Loss of personal items such as jewelry or other valuables
- Changes in property titles, wills, trusts, or power of attorney documents.



## **Taking Action in Response to Abuse, Neglect and Exploitation**

You should immediately report any suspected abuse, neglect or exploitation of your loved one or other residents in West Virginia nursing home. Please continue reading our guide to learn how you can report mistreatment and what you can expect when an investigation is conducted.

### **Sources / More Information**

- [Statistics/Data](#), National Center on Elder Abuse
- [2010 Annual Report](#), West Virginia Long-Term Care Ombudsman Program

# The Causes and Consequences of Nursing Home Abuse and Neglect

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Knowing the causes and consequences of nursing home abuse and neglect can help you to choose the right facility for your loved one and take prompt action if you discover that your loved one has been mistreated.

First, let's examine the factors that commonly lead to nursing home abuse and neglect. The National Center on Elder Abuse (NCEA) has put these risk factors into three categories:

## Facility Factors

A nursing home's owner, operator, administrators and staff can create a culture that breeds abuse and neglect. For instance, the nursing home may be a place where those providing care have little regard for the well-being of residents.

- **Lack of an abuse and neglect prevention policy.** West Virginia law requires nursing homes to have written policies and procedures concerning abuse, neglect and respect of residents' rights. Unfortunately, many facilities operate without clear policies in place or else fail to enforce them.

- **Negligence in hiring.** Nursing homes in our state must conduct criminal background checks before hiring staff members. No facility can hire a person who has been convicted of stealing or abuse, neglect, exploitation or other mistreatment of residents. Failing to properly screen staff members can expose vulnerable residents to dangerous individuals.
- **Negligence in training and supervision.** A nursing home must train staff members on how to interact with residents, handle difficult situations and control their anger. The home should also monitor employees and make sure they are not mistreating residents.
- **Staffing levels, turnover and stress.** Many studies have found a link between low staffing levels and low quality of care. When nursing home staff members are tired, stressed and overworked, they cannot give residents the attention they need. They may also take out their frustrations on residents. When there is a high staff turnover rate, it can lead to communication problems with residents or a failure to recognize a resident's special needs.
- **Physical environment.** Nursing home residents face the risk of serious harm if a facility is crowded, dirty, poorly lit or poorly maintained or if it lacks an adequate security system. For instance, a resident may suffer a potentially deadly fall due to a lack of handrails or clutter in a hallway.

- **A record of complaints and deficiencies.** The sad reality is that a nursing home may still be operating despite being the subject of numerous resident complaints and inspections that have resulted in deficiencies and fines.

### **Resident Factors**

Nursing home residents can be a factor in abuse and neglect as well. For instance, a resident may need a high level of care due to a mental illness or dementia. The same resident may have behavior problems that make it difficult to attend to his or her needs. However, a nursing home must ensure that its staff can properly handle such challenging situations without causing harm to the resident.

### **Relationship Factors**

According to the NCEA, mistreatment can arise due to issues involving:

- **Resident-staff relationships.** Staff members may be unable to communicate with residents or may lash out at those who are especially difficult due to their physical or mental condition.
- **Resident-resident relationships.** Resident-on-resident abuse is an often overlooked but highly serious problem in nursing homes. For instance, a Cornell University study published in 2014 found that one in five nursing home residents had been “involved in at least one aggressive encounter with fellow residents.”

- **Resident-visitor relationships.** As the NCEA notes, nursing home residents who are rarely visited by family and friends tend to face the highest risk of mistreatment. Nursing home residents need to be able to tell others about the neglect and abuse they are experiencing and to have someone watching out for them.

### **The Serious Consequences of Nursing Home Abuse and Neglect**

The NCEA reports that victims of elder abuse and neglect face a 300 percent higher risk of death. They also are more likely to suffer bone or joint problems, digestive problems, chronic pain, high blood pressure, heart problems, depression and anxiety. These consequences underscore the importance of taking immediate action when you know of or suspect abuse or neglect.

The mistreatment of nursing home residents can lead to:

- **Hip fractures** – The Centers for Disease Control and Prevention (CDC) reports that, on average, nursing home residents suffer between two to three falls each year. Falls are a leading cause of hip fractures.
- **Head injuries** – Traumatic brain injury (TBI) can also result from falls or from assaults by staff members or fellow residents.
- **Bed sores** – The CDC reports that an estimated one in 10 nursing home residents suffers from bed sores, or pressure ulcers. These serious wounds can be caused

by the failure of a nursing home staff to reposition residents in beds or wheelchairs.

- **Infections** – A study published in the journal, *Aging Health*, estimated that two million infections arise in U.S. nursing homes each year, including urinary tract, respiratory, skin and soft tissue infections.
  
- **Malnutrition and dehydration** – A study commissioned by The Commonwealth Fund found that nearly a third of the country’s nursing home residents suffer from malnutrition or dehydration, which can lead to physical weakness, falls and the increased risk of infection.
  
- **Medication-related injuries** – Medication errors can result in a wide range of injuries, including falls, seizures, heart attacks, strokes and death. These errors are far too common. A study by the U.S. Department of Health and Human Services found that one in three residents of skilled nursing facilities suffers harm directly caused by the treatment they receive. A startling 37 percent of those “adverse events” involve medication.

When you report suspected abuse or neglect of your loved one in a West Virginia nursing home and/or seek legal representation, it can lead to a prompt investigation and determination of the exact cause and compensation for the harmful consequences your loved one has suffered.

**Sources / More Information**

- [Nursing Home Abuse Risk Prevention Profile and Checklist](#), National Center on Elder Abuse
- [Falls in Nursing Homes](#), Centers for Disease Control and Prevention
- [Pressure Ulcers Among Nursing Home Residents](#), CDC
- [Common Infections in Nursing Homes](#), Aging Health
- [Malnutrition and Dehydration in Nursing Homes](#), The Commonwealth Fund
- [Adverse Events in Skilled Nursing Facilities](#), U.S. Department of Health and Human Services
- [Elder-to-Elder Abuse is Common in Nursing Homes](#), Cornell Chronicle

# How You Can Report Nursing Home Abuse and Neglect in West Virginia

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If you know or have reason to believe that your elderly loved one or others in a West Virginia nursing home are suffering abuse, neglect or exploitation, you should report it without delay to the Adult Protective Services (APS) division of the West Virginia Department of Health and Human Resources (DHHR), the state's Long-Term Care Ombudsman Program and, if necessary, your local law enforcement agency.

You should be aware of the following:

Although you can provide your name and contact information in order to receive the results of an investigation, your identity will not be disclosed to the nursing home or others unless you authorize it in writing.

As long as you make your report in good faith, you will be immune from civil or criminal liability.

The nursing home is prohibited by law from discharging, transferring or discriminating against your loved one or you in response to filing a complaint. If a nursing home violates this law, its license to operate in West Virginia can be suspended or revoked.



The following are the steps you should be prepared to take:

### **1. Gather your information.**

The more information you can provide, the easier it will be for APS and others to respond to your complaint. At a minimum, you should be prepared to report:

- Your loved one's name
- Your name and contact information
- The name and address of the nursing home
- The name of the perpetrator of the abuse, neglect or exploitation (even a first name can help an investigation)
- The date or time period when the alleged mistreatment occurred
- The nature of the incident (what happened and how was your loved one harmed by it).

If you can give the names of any potential witnesses, that would be helpful, too.

You should also expect to be asked whether your loved one is facing imminent danger.

If so, emergency steps can be taken to protect him or her.

### **2. File the report.**

Once you have your information collected, you should file the report right away with APS. You can do this:

- In person by going to your local DHHR office during business hours (8:30 a.m. to 5 p.m.). Go [here](#) to find the nearest office.
- By calling the 24-hour elder abuse hotline at 1-800-352-6513.

You can also file a complaint with your local ombudsman. To find this contact information, call 1-800-834-0598 or view the [online ombudsman directory](#).

In addition to the ombudsman, a copy of your report to APS may be sent to:

- Local law enforcement (if the case involves serious injury or death)
- Coroner or medical examiner (if it involves death)
- Administrator of the nursing home.

You should know that certain professionals are required by law to immediately report any known or suspected abuse or neglect, including:

- Medical, dental and mental health professionals
- Social workers
- Law enforcement officers
- State and regional long-term care ombudsmen
- Nursing home employees
- Christian science practitioners and religious healers.

If the situation involves financial exploitation, you can report it to the West Virginia Attorney General's office by calling **1-866-241-5062**.

### 3. Contact an attorney.

You will need to protect the legal rights of you and your loved one. You should contact a lawyer who has experience with representing victims and family members in cases of nursing home abuse, neglect or exploitation.

An attorney can help you by working with APS, the ombudsman, law enforcement and others to investigate the incident. The attorney can also make sure you and your loved one's rights and interests are protected in any administrative hearings that are held in the aftermath of an investigation.

Ultimately, if any physical, emotional or financial harm has been suffered due to the abuse, neglect or exploitation, your attorney can take steps to pursue a personal injury or wrongful death lawsuit.

Remember: When you report nursing home abuse or neglect, you protect not only your loved one but also others who may face the same harm or risk of harm.

#### Sources / More Information

- [West Virginia Long-Term Care Ombudsman Program](#), West Virginia Bureau of Senior Services
- [Report Abuse and Neglect](#), West Virginia Adult Protective Services

# What You Can Expect in a Nursing Home Abuse or Neglect Investigation

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After you file a complaint with Adult Protective Services (APS), you may wonder what will happen next. The following is a description of how APS and others may investigate your complaint and the administrative, criminal and civil consequences that may result from that investigation.

## **Adult Protective Services Investigation**

Upon receiving your complaint, APS will launch an investigation to determine its validity. As part of this investigation, APS will make an unannounced inspection of the nursing home. At the time of this inspection, APS will give the nursing home notice of the complaint.

During its inspection, APS will make observations of the facility and may interview your loved one, fellow residents, administrators and staff members. The inspector may also review any facility records that are relevant to its investigation.

Within 20 days after completing its investigation, APS must notify you (as the complainant) and the nursing home of the results. If a violation (or “deficiency”) has

been found, APS will notify the nursing home of the “plan of correction” it must submit or follow and of any other penalties it faces. Penalties may include:

- Suspending or revoking the nursing home’s license
- Reducing its bed capacity
- Banning any new admissions to the home
- Placing the home under temporary management
- Assessing civil penalties
- Closing the home and facilitating transfer of residents (if there is an emergency).

The fines that a nursing home faces can range from \$50 to \$8,000. The amount will depend on whether the violation has put a resident in immediate jeopardy or resulted in actual or potential harm. Fines may also be assessed for repeat deficiencies and for a nursing home’s failure to submit or follow a plan of correction.

Investigations may also be conducted by the nursing home itself, state or regional ombudsman and law enforcement. For instance, if your loved one’s case involves a staff member assaulting him or her, the staff member may be charged with a criminal offense. These investigations may overlap with the APS investigation.

If a nursing home has been found to have committed a violation, it may seek judicial review of that finding and/or challenge any penalties that are imposed.

The main reporting agency for reporting abuse, beside APS, is OHFLAC (Office of Health Facility and Licensure Certification).

### **Personal Injury or Wrongful Death Lawsuit**

Regardless of the results of the investigation by the APS, ombudsman, law enforcement or others, you have the right to meet with an attorney and explore the possibility of seeking relief through our civil justice system.

The evidence collected through the investigation and presented at a hearing (if one is held) can play an important role as you and your lawyer determine whether to pursue a personal injury or wrongful death claim.

A nursing home abuse or neglect lawsuit is governed by a statute of limitations. In other words, the claim must be filed within a specific period of time.

In West Virginia, a personal injury claim would need to be filed within two years from the date of the injury or from the date when it reasonably could have been discovered (such as the date of a diagnosis). A wrongful death claim must be filed within two years from the date of death.

After a lawsuit is filed – typically in the county where the nursing home is located – you can expect a case to go through the following stages:

#### **Discovery**

Your attorney will conduct an initial investigation and consult with experts before a lawsuit is filed. After a lawsuit is filed, more information can be obtained through a formal process called “discovery.”

For instance, your attorney may ask the nursing home's owner, operator, administrators or staff members to provide documents. Your attorney may also seek sworn statements in a deposition.

Of course, the nursing home and other parties being sued can also request information through discovery. A nursing home may also ask that your loved one undergo a medical examination.

If a nursing home fails to comply with any discovery requests, a motion can be filed with a court to force the home to comply.

### **Settlement Negotiations**

Your attorney will determine the economic and non-economic harm that has been caused by the nursing home abuse or neglect and submit a demand for compensation to the parties being sued. This "demand letter" typically starts a process of negotiating a settlement. In some cases, a mediator may be used to help the parties reach an agreement.

If a settlement is reached that fully and fairly covers you and/or your loved one's losses, you will agree to release the other party (or parties) from liability. This is why a settlement must be carefully reviewed by your attorney.

If a settlement cannot be reached, the case will go to trial. Each side will get a chance to present evidence, including documents and testimony.

The West Virginia legislature recently passed a law that restricts evidence that can be presented of a nursing home's past inspections, disciplinary actions, accreditation reports and civil or criminal penalties. This evidence must either specifically apply to the injured nursing home resident's case or involve "substantially similar conduct" that occurred within a year of the resident's injury.

You should know that a trial may be broken into two parts: Determining liability (or legal responsibility) and determining damages.

Under another new piece of legislation, the non-economic damages that can be recovered in a West Virginia nursing home abuse or neglect claim are limited to \$250,000. If a case involves a wrongful death, permanent and substantial physical deformity, loss of limb or organ function, non-economic damages would be capped at \$500,000.

Any party can appeal the judgment that is entered on a verdict. In some situations, settlement negotiations may continue through trial or after a verdict. Action may need to be taken to enforce a judgment and collect compensation.

#### Sources / More Information

[West Virginia Nursing Home Licensure Rule](#)



# How a Lawsuit Can Address Nursing Home Abuse or Neglect

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If your loved one has suffered serious injury or death due to abuse or neglect in a nursing home, the facility's owner, operator, administrators and staff may all face serious consequences that, to a degree, amount to justice.

An investigation by Adult Protective Services may lead to the nursing home being forced to address problems that gave rise to the abuse or neglect. For instance, the home may need to:

- Adopt new policies and procedures
- Change its hiring and training practices
- Fire personnel involved in the incident
- Change vendors who provide food, security or other services
- Make physical repairs to the facility.

The nursing home may also face fines or have its license to operate in West Virginia suspended or revoked.

Additionally, the parties involved in the abuse or neglect may be charged with criminal offenses and face jail time, fines and the loss of their professional license or certification.

Given these possible consequences, you may ask yourself: Why pursue a lawsuit? The following are three important reasons to consider taking such an action:

**1. You can seek justice if no other actions are taken against the facility.**

Unfortunately, an investigation by APS or law enforcement may result in no action being taken against a nursing home that has caused harm to your loved one. A civil lawsuit allows you to pursue your own investigation into the suspected abuse or neglect and to seek the justice that you believe your loved one and your family deserve.

**2. You can pursue compensation for the harm caused.**

While administrative actions and criminal prosecutions can hold abusive or negligent nursing home care providers accountable, they do not provide compensation for the damages caused by abuse or neglect. You can only obtain this relief by pursuing a civil lawsuit.

The damages that can be sought in a nursing home abuse or neglect claim include:

- Past and future medical expenses
- Physical pain and suffering
- Emotional distress.

If a case involves a wrongful death, damages may include the cost of funeral expenses as well as compensation for your sorrow and mental anguish and the loss of your loved one's society, companionship, comfort, guidance and "kindly offices."

### **3. You can punish and deter a nursing home's misconduct.**

A nursing home abuse or neglect lawsuit can also seek punitive damages, which are damages that go beyond the economic and non-economic harm, or compensatory damages, that have been suffered.

These damages are awarded if there is "clear and convincing evidence" that a nursing home acted "with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others."

Even though punitive damages in West Virginia are capped at either \$500,000 or four times the amount of compensatory damages (whichever is greater), that amount can still be substantial enough to send a strong message – much higher than the penalties a nursing home may face otherwise.

In this sense, a lawsuit can allow you to punish a nursing home for the harm it has caused and deter it from causing similar harm to others in the future. It can lead to meaningful changes in the way a nursing home does business.

Of course, there are many other factors to consider when deciding whether to go forward with a nursing home abuse or neglect lawsuit. These factors include the time

it will take to pursue a case and the costs of litigation (typically deducted from the settlement or judgment).

You should meet with an attorney to learn more about all of these factors and to decide whether pursuing a lawsuit is right for you and your loved one.