

TEXAS LAWYER

Commentary

The Effect of COVID-19 on Nursing Home Abuse: A Legal Perspective

Numerous class-action and individual wrongful death lawsuits have been filed asserting that proper precautions were not maintained to keep nursing homes residents safe from contracting COVID-19.

By **Daniel Pollack and Elisa Reiter** | December 16, 2020 at 06:44 PM



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According to the Centers for Disease Control and Prevention, [in 2015](#) there were 1.3 million nursing residents. Numerous [class-action](#) and [individual wrongful death lawsuits](#) have been filed asserting that proper precautions were not maintained to keep nursing homes residents safe from contracting COVID-19. In due time, those lawsuits will work their way through the judicial system.

The NursingHomeGuide.org [reports](#) that

The statistics reflecting incidents of abuse involving elderly residents in nursing homes and care facilities are both staggering and disheartening. At the broadest level, more than two million cases of elder abuse are reported every year, and almost one out of every ten elderly individuals will experience some form of elder abuse. Moreover, virtually all parties working closely with the elderly on topics such as nursing home abuse have noted that the overwhelming majority of abuse incidents remain unreported. Sadly, while those figures reflect a national epidemic of violating the vulnerable, but also, most likely grossly understate the problem of elder abuse in the United States.

Has the pandemic also caused a spike in other kinds of allegations of nursing home abuse? Last April, the U.S. Attorney's Office for the District of Massachusetts and the Department of Justice's Civil Rights Division initiated an investigation into Soldiers' Home, a state-funded nursing facility for military veterans in Massachusetts. The allegations [cited](#) failures to provide adequate medical care to patients, both *generally* and during the COVID-19 pandemic.

Nursing home residents with Alzheimer's disease or dementia often have difficulty communicating. Even if there are minimal communication issues, some residents may be reluctant to report that they have been abused because they are afraid of staff retaliation. With relatives and friends curtailed from visiting and checking on loved ones, they will not know if the [nursing home resident](#) is:

- being provided satisfactory supervision, assistance and care by a sufficient number of staff;
- experiencing bedsores and pressure ulcers;
- being physically or sexually abused;
- being properly medicated;
- the victim of delayed or cancelled medical procedures;
- being unnecessarily exposed to staff who are not following proper sanitary procedures.

“[Coronavirus disease 2019](#) (COVID-19) is particularly deleterious to older adults, and there has been a massive increase in reports of elder abuse during the

pandemic”. In Dallas County, [Senior Source](#) established the Elder Financial Safety Center in 2014, with a goal of assuring “the financial security of older adults through prevention, protection and prosecution services”. Dallas County reported more than [138,233 COVID-19 cases and 1,275 deaths as of Wednesday](#), according to Dallas County Health and Human Services.

The [Texas Health and Human Services Commission](#) maintains a portal to facilitate reporting allegations of physical, mental, neglect or exploitation at licensed facilities, including allegations involving Assisted Living facilities and Home and Health Hospice facilities. Reports of an increase in [“elder orphans”](#) are on the rise due to the pandemic. Safety protocols prevent visits to nursing homes and elder care facilities. In Texas and beyond our state, family members cannot bird dog caretakers at long term care facilities in the way they could prior to the pandemic; moreover, family members face their own sandwich generation issues, plagued by unemployment and having their own resources taxed with adult children returning home, where those adult children are relying on financial aid from their parents - sometimes [to the peril of elderly parents](#).

[Texas Health and Human Services Commission](#) maintains records on standards for controlling infectious diseases inside Texas nursing homes and elder care facilities. Hundreds of Texas nursing homes violated standards for controlling infectious diseases since March, 2020. As of late October, 2020:

[West Oaks Nursing and Rehabilitation Center](#) tops the list in Central Texas with eight violations. In April, inspectors noted “the facility failed to establish and maintain an infection control program,” and “the facility did not keep a resident apart from the others if the resident has an infection that can [spread](#).”

Texas State House of Representative Julie Johnson, voted [‘Freshman of the Year’](#), by Texas Monthly for her work during the 86th Legislative session, notes the following in her 12/11/2020 COVID-19 update:

DSHS has submitted the first week’s allocation of COVID-19 vaccine to the Centers for Disease Control and Prevention. The first week’s allocation is

224,250 doses of the Pfizer vaccine to be shipped to 109 hospitals in 34 counties as early as the week of Dec. 14, depending on when the vaccine is authorized for use in the United States. As expected, the initial vaccine supply is limited, and the first week's allocation is based on information submitted by vaccine providers when they enrolled, including the number of health care workers who can be quickly vaccinated and vaccine storage capacity at each site. More vaccine will be available for more providers in the following weeks, including vaccine from Moderna once it is authorized. The distribution list for this week's allocation can be accessed [here](#).

Sadly, the distribution of vaccines will not exacerbate social isolation occasioned by the pandemic, particularly for the elderly. Social isolation, at home, or at assisted care facilities, ramps up the risk of elder abuse. Where can older adults go for solace and a holistic approach if facing abuse?

A [growing national movement](#) seeks to address the needs of elder abuse victims by providing temporary shelter with intensive services. These shelter programs, including varied models of shelter, are part of a burgeoning community collective called the [SPRiNG Alliance \(Shelter Partners: Regional. National. Global.\)](#) This movement focuses on accomplishing two goals: supporting a survivor's journey to medical, emotional, legal and financial health and securing safe and stable housing for them in the place they most want to be, which is most often the home they came from.

Resources exist in Texas to help individuals in assisted care and nursing home facilities, even in the era of social isolation necessitated by COVID-19.

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