



3601 C Street, 1420 | Anchorage, AK 99503
1-866-227-7447 | Fax: 907-341-2270
aarp.org/ak | alaska@aarp.org | twitter: @aarpalaska
facebook.com/aarpak

March 29, 2021

OPPOSING IMMUNITY FOR LONG-TERM CARE FACILITIES 2021 Alaska Legislative Session

AARP opposes any proposal to shield nursing homes, assisted living facilities and other long-term care (LTC) facilities from liability. That includes immunity for harm that may have been caused to residents due to negligence that has occurred during this pandemic.

AARP has long fought for the rights of residents in LTC facilities to ensure their health, safety, quality of care and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected or abused.

While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers remain responsible for any negligent actions to ensure that residents have some protection and opportunity for redress.

Negligence is the failure to use the level of care and caution that an ordinary person would use in similar circumstances. Under existing law, a LTC facility must exercise the same level of care that other LTC facilities would exercise under similar circumstances, including this emergency period. A LTC facility that is incapable of providing the level of care normally required of it would not be held liable if a court determined they had acted reasonably under the totality of circumstances. Residents of LTC facilities who are harmed by a facility's actions or inactions that have no real relation to the pandemic should not be prevented from seeking accountability.

These residents are particularly vulnerable to negligence and should not be limited to seeking redress only for deliberate and reckless actions that define *gross* negligence. Pursuing a claim of negligence or abuse in court is not easy. There are already many significant barriers to accessing the courts, including a cap on damages and arbitration requirements, often part of the resident admission agreement.

No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of *last resort*, but it must remain an option. LTC facilities should know they will continue to be held responsible for providing the level of quality of care that is required of them.

LTC facilities are not like other businesses; these facilities are *home* to the residents that live there. The Alaska legislature should not strip away the rights and protections of LTC facility residents.



EXAMPLE OF LIABILITY IMMUNITY

Here is just one example of how liability immunity could have a serious negative impact on the ability of residents of long-term care facilities and their families to seek redress.

Let's say a nursing home had a long history of understaffing, to the point they were not regularly meeting the care needs of residents.

Let's say also they had been the subject of multiple complaints prior to the pandemic and afterwards.

A resident, Mrs. Jones was found to have a massive decubitus ulcer (commonly known as a bedsore) that went all the way to the bone and later died of this.

It was determined that she frequently was left in soiled diapers and was never turned in her bed or gotten out of bed, as required by her care plan, due to the ongoing lack of staff.

Liability immunity proposals would potentially shield the nursing home from liability for Mrs. Jones's death, by allowing it to claim that the lack of staffing made them unable to provide the care they were required to provide.

And that is so, even though the lack of staffing long preceded the pandemic, or that the understaffing may not have been in any way related to COVID-19.

They simply may not have made any reasonable effort to increase staffing levels or otherwise care for Mrs. Jones so as to prevent her death and that failure to act, while negligent, would leave the family with no legal recourse.