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Nursing Home Litigation

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I. THE NURSING HOME CARE ACT

A. [18.1] Background

The General Assembly enacted the Nursing Home Care Act (NHCA), 210 ILCS 45/1-101, *et seq.*, “amid concern over reports of ‘inadequate, improper and degrading treatment of patients in nursing homes.’ ” *Harris v. Manor Healthcare Corp.*, 111 Ill.2d 350, 489 N.E.2d 1374, 1377, 95 Ill.Dec. 510 (1986), quoting Senate Debates, 81st General Assembly, Regular Session, p. 184 (May 14, 1979) (statement of Senator Berning). Originally titled the “Nursing Home Care Reform Act of 1979,” nursing home residents and their families were empowered by the NHCA as their own “private attorneys general” in the context of NHCA claims, wherein the legislature encouraged nursing home residents to pursue civil remedies for violations of the statute. *See Eads v. Heritage Enterprises, Inc.*, 204 Ill.2d 92, 787 N.E.2d 771, 272 Ill.Dec. 585 (2003). Further, the legislature incentivized private attorneys to accept cases involving nursing home residents who have been abused or neglected by including a fee and cost-shifting provision within the NHCA.

The NHCA has been amended numerous times since its enactment, including in 2010. *See* P.A. 96-1372 (eff. July 29, 2010), P.A. 96-1373 (eff. July 29, 2010). As it relates to P.A. 96-1372, this amendment, among other revisions, added protections for those residents admitted with mental illnesses and psychotropic medications, created a more rigorous screening process for identifying sex offenders, and added to the NHCA whistleblower protection to protect those who report improprieties within a facility. P.A. 96-1373 added to the NHCA a section titled “Nursing home fraud, abuse, and neglect prevention and reporting.” 210 ILCS 45/3-808.5. This addition imposes record-keeping and disclosure requirements whenever a report of abuse or neglect is made by any person to an administrator, a director of nursing, or any other person with management responsibility at a facility. Further, that disclosed information is required to be disclosed within 24 hours of the report to the owners and licensee of the facility, who is then required to maintain all records necessary to show compliance with 210 ILCS 45/3-808.5(b). 210 ILCS 45/3-808.5(c).

B. [18.2] Primary Purpose

In *Eads v. Heritage Enterprises, Inc.*, 204 Ill.2d 92, 787 N.E.2d 771, 778, 272 Ill.Dec. 585 (2003), the Illinois Supreme Court stated that “the Nursing Home Care Act contains a number of additional provisions whose purpose is to encourage Plaintiffs to bring private rights of action.”

Furthermore, the court stated:

Under the Nursing Home Care Act, actionable neglect includes a failure to provide adequate “personal care” which failure results in physical injury to the resident. 210 ILCS 45/1-117. . . . “Personal care” is defined to mean assistance with, among other things, “movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being” of the resident. 210 ILCS 45/1-120. . . .

* * *

The Nursing Home Care Act sought to achieve its purposes by expanding the criminal and civil liability of nursing home owners and licensees and by encouraging nursing home residents to press their claims as private attorneys general. Under the Act, litigation was viewed as an engine of reform. 787 N.E.2d at 776 – 777.

In *Harris v. Manor Healthcare Corp.*, 111 Ill.2d 350, 489 N.E.2d 1374, 1377, 95 Ill.Dec. 510 (1986), the Illinois Supreme Court further offered the following insight:

A central component of the Act is the resident’s “bill of rights.” Under part I of article II of the Act . . . residents are guaranteed certain rights. These rights include: the right to manage their own financial affairs; the right to refuse treatment; the right to the free exercise of religion; the right to private noncensored mail and telephone conversations; the right to refuse to perform uncompensated labor; the right to inspect personal records; the right to present grievances without retaliation; the right to privacy with respect to medical and personal care; and the right not to be subjected to abuse or neglect by nursing home personnel.

To ensure that nursing homes comply with the Act, the General Assembly gave the [Illinois] Department of Public Health [(IDPH)] expanded regulatory and enforcement powers, and created civil as well as criminal penalties for violations of the Act. . . . In addition to the public enforcement provisions, nursing home residents were given several statutory remedies against nursing homes. Senator Daley, in explaining the rationale for including private remedies in the Act, remarked after its passage that, “[d]espite the best of intentions, the government can only do so much to regulate nursing home care. On the other hand, residents are always in the facilities and their friends, relatives and community supporters can regularly keep an eye on the conditions existing in facilities.” Daley and Jost, *The Nursing Home Reform Act of 1979*, 68 Ill.B.J. 448, 453 (1980).

C. [18.3] Parties Subject to a Nursing Home Care Act Litigation

To assert a claim pursuant to the Nursing Home Care Act, the individual must be a “resident,” or the resident’s legal representative, of a “facility” as those terms are defined by the statute. *Myers v. Heritage Health Enterprises, Inc.*, 332 Ill.App.3d 514, 773 N.E.2d 767, 266 Ill.Dec. 32 (4th Dist. 2002). “Resident” is defined as “a person receiving personal or medical care, including but not limited to mental health treatment, psychiatric rehabilitation, physical rehabilitation, and assistance with activities of daily living, from a facility.” 210 ILCS 45/1-122. The NHCA provides a broad definition of what constitutes a “facility” in the context of the statute and then provides a list of 15 types of institutions that are excluded from the meaning of “facility.” Specifically, the NHCA defines the term “facility” as

a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code, or any similar institution operated by a political subdivision of the State of Illinois, which provides,