

Nursing homes and insurance

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Posted: Tuesday, April 3, 2012 11:35 am | Updated: 12:07 pm, Tue Apr 3, 2012.

By STEVE HORRELL stevehorrell@hotmail.com |

Posted on April 3, 2012



by [Steve Horrell](#)

Not all of them carry liability coverage

Confident that the nursing home you may have in mind for your aging parents has adequate insurance?

Think again.

Under Illinois law, nursing homes are under no obligation to carry liability insurance, and attorneys who represent injured nursing home residents in court say that's a little known fact that too few families with aging parents are aware of.

Many facilities are underinsured, if they carry any insurance at all.

"I find it incredible that in Illinois it's mandatory for each of us to have liability insurance coverage on our vehicles – we can't even go up town to get a loaf of bread without it – but there is no requirement that a long-term care facility, or a skilled nursing facility, have liability insurance," said Robert Gregory, whose Robert H. Gregory Law Firm, in East Alton, has represented clients involved with nursing home issues for more than 15 years.

Just how many Illinois nursing homes carry liability insurance is difficult to determine. A facility may have coverage at one point but not another. Some carry only minimal coverage and others have so-called eroding policies that allow the cost of defense to be deducted from the policy coverage, said Jonathan Rosenfeld, a Chicago-based attorney who represents injured nursing home patients nationwide.

Rosenfeld estimates that the number of facilities with no insurance is "fairly minimal."

"The problem is that a lot of these facilities are drastically underinsured," he said in a recent phone interview. "Theoretically, you can try to recover from the owner, but the way they are structured and set up, it's very difficult to do so."

The Nursing Home Care Act was created to protect nursing home residents and allow those injured due to a facility's negligence a chance to recover damages in court. "But it means very little if, at the end of the day, there is no one there to compensate them for that," Gregory said. "You're holding a judgment that's not worth the paper it's written on. What good is that?"

Several attorneys who have defended nursing homes in court and representatives of the Illinois Nursing Home Administrators Association declined to comment for the story.

Both Gregory and Rosenfeld agree that it's up to family members to ask nursing home officials what kind of liability insurance they carry should there be an injury.

But that's easier said than done: at the very time when family members are thrust into making that determination, they are likely to be on an emotional roller coaster themselves and less likely to make rational decisions.

"It's a very emotional situation for the family to have to come to the conclusion that they can no longer care for their mother or father and that they need round-the-clock skilled nursing care," Gregory said. "It's very troubling and emotional, and there's a lot going on."

Furthermore, the decision, of necessity, is often made hastily. An aging parent may have fallen or taken a quick turn for the worse and a relative is forced to act quickly.

Often there is a quick tour of a facility followed by a perusal of reams of paperwork. The last thing on a relative's mind is insurance.

"No one anticipates that their loved ones will be hurt," Gregory said. "But if I were going to recommend anything, it would be to just ask point blank: Does this facility maintain liability insurance in the event a loved one is injured?"

Rosenfeld maintains that Illinois's lack of mandatory insurance means that many residents who are injured by the negligence of nursing home staff go uncompensated.

In a blog posting three years ago, Rosenfeld wrote that nursing homes may appear to have large assets and seem capable of satisfying any judgment against them.

"The truth is that most facilities have a complicated corporate structure to make a recovery difficult," Rosenfeld wrote. "Further, many nursing home owners are sham corporations governed by foreign law."

Gregory said when families discover that a nursing home has little or no insurance, they may decide that the expense of pursuing the case outweighs the possible benefits.

"It goes to a moral commitment to those you are providing care for," Gregory said. "There is a distinction between what's legally required and what, in good faith, individuals who care and make promises to residents and families should do. It's frustrating to me, and it's horribly frustrating to my clients when they're in that position."

Gregory said there has been a trend recently for national companies – who are neither the licensees nor the owners – to come in and manage a nursing home.

Often they are paid hefty management fees and may have an affiliation with the individuals who ultimately profit from the operation of the facility.

"It's astonishing to my clients when they find that there may not be any liability coverage," Gregory said.

In February of 2007 state Rep. John Bradley, D-Marion, introduced House Bill 3445. It would have amended the Nursing Home Care Act

and the state Mandate Act, and would have:

- Required nursing homes to carry at least \$1 million of coverage per occurrence;
- Called for a penalty for facilities without coverage as a Type A violation under the Nursing Home Act;
- Forced disclosure of each nursing home's insurance policy to the public;
- Forced a nursing home licensee to pay three times the actual damages, or \$500, whichever is greater, and costs and attorney's fees to a resident whose rights have been violated

The bill was assigned to the Rules Committee, where it died.

Bradley did not return messages seeking comment, nor did the bill's co-sponsor, state Rep. Mary Flowers, D-Chicago.

Dwight Miller, co-chairman of the Illinois Nursing Home Administrator's Association, in northwest Illinois, also did not return messages.

Two months ago, state Rep. Kelly Cassidy, D-Chicago, introduced HB 5668. Among other provisions, it would require all nursing facilities to maintain "insurance against risks from neglect of residents in an amount of at least \$1 million per year."

It would also allow the Illinois Department of Public Health to deny a license application if the applicant does not have proof of liability insurance. HB 5668 would also allow the IDPH to suspend, revoke or renew a license if the facility fails to maintain its liability insurance.

The bill was sent to the Rules Committee.

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