

New Jersey Disallows Private Causes of Action Against Assisted Living Facilities for Breach of the Statutory Bill of Rights

By: Rafael Vergara and Monica Doss

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Residents of an assisted living facility cannot maintain a private cause of action for breach of the facility's statutory bill of rights, based upon a New Jersey appellate ruling of June 15, 2021. In *Estate of Burns v. Care One at Stanwick, LLC*, 2021 N.J. Super. LEXIS 79, the court overturned a trial court's ruling that allowed the estate of a resident to pursue a private cause of action for claims against Care One, an assisted living facility.

The estate of a prior resident of Care One sought an order establishing that Care One is subject to the 1979 Rooming and Boarding House Act. The trial court granted the motion "subject to plaintiff proving at trial that Care One was a facility that, by legislation, allowed plaintiff a private cause of action." The trial court concluded that there was a private cause of action for the breach of the rights in the Rooming and Boarding House Act. However, on Care One's appeal of that ruling, the appellate court disagreed and found that the 2011 bill that set forth the rights of assisted living residents did not establish a private cause of action for the violation of a bill of rights.

In coming to its conclusion, the appellate court looked to the history and language of the legislation affecting assisted living facilities, nursing homes and "dementia care homes." In 1953, the legislature began regulating residential health care facilities. In 1976, it enacted the Nursing Home Responsibilities and Residents' Rights Act. In 1979, it expanded its regulation of "residential health care facilities" to include rooming and boarding houses. In 1997, it incorporated patients afflicted with Alzheimer's, dementia and other related disorders into the protections for residents of residential health care facilities, and in 2016 it began regulating "dementia care homes." In all these instances, the legislature declared bills of rights for residents and expressly authorized private causes of action for a violation of those rights.

According to the court, however, when the legislature recognized assisted living residences in 2002 and enacted a bill of rights for assisted living residences in 2011, the legislature did not make the same express authorization for private causes of action that it did in prior related legislation. The legislature "just didn't say anything about it." Thus, the court found that it had to "tread lightly" and could not find or establish a new cause of action that the legislature did not set forth as it had in prior legislation.

Although this ruling barred private causes of action for the breach of the statutory bill of rights, assisted living facilities are still subject to these statutory requirements. Failure to abide by the bill of rights may affect licensing, and the Department of Health still may sue for such violations.

If you have questions or would like further information, please contact Rafael Vergara (vergarar@whiteandwilliams.com; 212.631.4416) or Monica Doss (dossm@whiteandwilliams.com; 212.868.4831).

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