

SENIOR LIVING FACILITIES UNDER THE LEGAL EYE

Managing Risk in the Care Environment



Insurance | Risk Management | Consulting



Senior Living

These are interesting times for the senior living facility industry. With the much-touted Fair Housing Act falling short of its performance expectations,¹ US citizens looking to this law for non-discriminatory access to housing have often found themselves high and dry.²

Senior living facilities offer a viable alternative as a safe and comfortable abode for the very different needs and requirements of the US' aging population.³ Indeed, over 2.2 million of the country's most vulnerable citizens already reside in nursing homes and senior living facilities, and the number is only projected to rise as the population ages.⁴

However, in early 2020, even as the senior living segment providers were still coping with surging demand for their facilities, the pandemic brought an unprecedented challenge for companies in this sector to manage operations at scale.

While the underprepared and overworked staff were required, at speed, to follow a whole new set of protocols and maintain the same standard of care and attention, facility managers were hard-pressed to undertake unforeseen overhead expenses to confront the crisis.

Consequently, there were some lapses in monitoring patients, which caused some of the most extensive litigation as well as fines and penalties in the sector's history.⁵ With the frequency and severity of claims against senior living and long-term care operators on the rise,⁶ the overall cost of risk has become of great concern for companies operating in this sector.

The industry continues to walk the tightrope between satisfying the increasing demand for its services and staying alert for emerging future risks. As a result, growing litigations (partly attributable to factors related to the pandemic) call for much better levels of preparedness from managers of senior living facilities today.

EMERGING TRENDS IN LITIGATION AGAINST SENIOR LIVING FACILITIES

An overall trend in recent claims from the plaintiffs' side is the argument that senior living facilities compromise residents' well-being for the sake of earning more profit.⁷ These lawsuits are brought by residents or their families, government agencies, or advocacy groups, and the amounts claimed for such settlements are becoming exorbitantly high.⁸

Another observable trend is that the plaintiff's counsel may refrain from citing COVID-19 as the cause of their claim, as most insurance companies incorporate COVID-19 protection under general and professional liability. The plaintiff may argue that their lawsuit was filed in response to another incident or event covered by the insurance policy not related to COVID-19.

Certain lawsuits also claim that operators engage in misleading marketing tactics that cause disappointment, frustration and physical harm to residents who may not receive the standard of care they were led to expect.

The rising frequency of chronic health conditions among seniors is another sensitive factor that impacts the rate of lawsuits. As the aging population becomes more susceptible to medically complex conditions⁹ such as dementia, Parkinson's disease, arthritis and osteoporosis, facilities struggle to provide expert care and staffing.¹⁰



About 60% of the US population will need long-term care services in their lifetime.

Source: ASPA report, US Department of Health & Human Services, 2021¹²

RISK ENVIRONMENT OUTLOOK

The growing number of litigation and claims in the senior care segment has spurred several insurance carriers to exit the market due to concerns about the potential costs and risks associated with these lawsuits, as well as the consequent reputational damage.¹¹

These concerns are amplified in the context of the long-term care industry, where there is a higher risk of fatal incidents and heightened regulatory scrutiny. Ultimately, care providers face rising costs and growing anxiety over the possibility of lawsuits in conjunction with increasing insurance costs, as insurers are scarce in this elevated-risk environment.

ADOPTING BEST PRACTICES

With more and more senior citizens requiring nursing homes and senior living facilities, companies in this sector need to work toward mitigating their liabilities. While quality care facilities strive every day to keep residents safe, facility providers should stay on top of operational best practices to manage risk, reduce the possibility of litigation and bring down their cost of insurance.

Following are some recommendations for managers of senior living facilities and nursing homes.

1. Prioritize the provision of a safe and healthy environment by following well-documented procedures in regular cleaning and infection control.
2. Use technology and integrate digital monitoring systems to assist and complement the physical workforce.
3. Implement clearly defined risk management policies and procedures, and adhere to state guidelines and protocols.
4. Rigorously train all employees to handle common geriatric accidents and health conditions such as falling or slipping, infection, and mental or physical abuse.
5. Maintain meticulous documentation. This includes keeping continuously updated records of all incidents and deteriorations in residents' conditions, including recommendations for transferring to a higher level of care.
6. Be proactive and transparent in sharing the requisite records. In the case of liability claims and litigation, providers must be able to produce all the relevant documents on demand from the litigators and counsel. If systematically maintained, this can provide sufficient proof that there have been no regulatory violations that could lead to further litigation.

CLOSING THOUGHTS

The pandemic, housing law disappointments, an aging US population and associated factors have triggered many of the recent major lawsuits in the senior living sector. This has brought risk management very much to the fore in the industry. Therefore, owners and operators of senior living and long-term care facilities who are seeking to reduce risks and insurance costs must stay extra vigilant on risk management discipline and litigation management.

Considering the broad and complex risks facing senior living and nursing home facilities today, it is pertinent for operatives in this segment to focus on comprehensive liability mitigation. To manage this ongoing risk rigorously and effectively, and ensure their facilities are continuously covered by the appropriate liability policies, businesses need to work closely with their risk consultants to implement and maintain the required policies and procedures.

Engage with a specialized insurance broker to establish your general and professional liability limits to ensure that your company is well and appropriately prepared for today's challenges.

Sources

- 1 Abedin, Shanti et al. [Making Every Neighborhood A Place Of Opportunity](#). *National Fair Housing Alliance*, 2018.
- 2 Jargowsky, Paul A. et al. [The Fair Housing Act at 50: Successes, Failures, and Future Directions](#). *Housing Policy Debate*. Taylor & Francis Online, 2019.
- 3 [25 Insightful Nursing Home Statistics \[2023\]: How Many Nursing Homes Are In the US?](#) Zippia, July 3, 2023.
- 4 [America Is Getting Older](#). *United States Census Bureau*, June 22, 2023.
- 5 Deliso, Meredith. [LA assisted living facility faces felony charges over deadly COVID-19 outbreak](#). *ABC News*, March 15, 2023.
- 6 Fetterolf, M. et al. [Rise in Assisted Living Lawsuits Indicates the Need for a Consumer-Centered Model of Care](#). *Journal of Nursing Home Research*, June 5, 2019.
- 7 Ostrov, Barbara F. [Largest Assisted Living Chain in US Sued for Poor Care of Elderly](#). *California Healthline*, September 7, 2017.
- 8 Altamari, Dave and Carlesso, Jenna. [Lawsuits, fines, complaints put pressure on Athena nursing homes](#). *CT Mirror*, January 15, 2023.
- 9 Jaul, Efraim and Barron, Jeremy. [Age-Related Diseases and Clinical and Public Health Implications for the 85 Years Old and Over Population](#). *Frontiers*, December 11, 2017.
- 10 Bonvissuto, Kimberly. [Court approves class action status for assisted living staffing lawsuit](#). *McKnight's Senior Living*, August 9, 2023.
- 11 Levy, Joe. [Senior Living in a Post-Pandemic World](#). *Insurance Journal*, November 16, 2020.
- 12 [Most Older Adults Are Likely to Need and Use Long-Term Services and Supports](#). *ASPE*, January 31, 2021.