

Assisted Living Facilities and Statutory Bills of Rights

July 26, 2021 | by Timothy Ford

Court Rules that Residents of Assisted Living Facilities Do Not Have a Private Cause of Action for a Facility's Alleged Breach of their Statutory Bill of Rights

The licensing and regulatory authority over a facility that houses the senior care community depends upon how the facility is licensed, e.g., as an assisted living facility, a dementia care home, or a skilled nursing facility. Statutory Bills of Rights protect residents in facilities, but do not necessarily create a private cause of action for an alleged violation of the Bill of Rights.

In *Estate of James Burns v. Care One*, the New Jersey Appellate Division ruled that residents of assisted living facilities do not have the right to sue for a breach of the facility's statutory bill of rights.

Appellate Division Ruled No Private Cause of Action Upon Review of Laws Protecting Assisted Living Facility Residents

On June 15, 2021, the Appellate Division overturned a trial court's December 2020 ruling that had allowed a claim to be filed against a Care One facility. The panel's decision stated that it declined to craft into the common law a private cause of action for violating the bill of rights, when such a claim was not authorized by the Legislature in a 2011 bill.

The initial trial court ruling involved a wrongful death case brought by the estate of a resident who suffered from dementia and was 88 years old when admitted to the Care One facility in 2014. The resident died the following year after being sent to another facility for long-term care. The estate filed suit in 2016, alleging the resident's death was due to negligent care during his stay at the Care One facility.

Trial Court Required Decedent's Estate to First Prove that Care One Facility Allowed for Private Cause of Action

In 2020, the estate sought an order that Care One was subject to the rights afforded to residents of the facilities under New Jersey's Rooming and Boarding Housing Act. Superior Court Judge John E. Harrington granted the motion, stipulating that the plaintiff must prove that the Care One facility allowed for private cause of action.

On Care One's appeal, the panel carefully reviewed the various acts and bills of rights established by the New Jersey Legislature pertaining to residents of various nursing home, assisted living, and long-term care facilities.

Appellate Division Reviews Legislation and Legislative Intent of Acts and Bills for Assisted Living Facilities

The relevant timeline and specifics of these Acts and bills included:

- In 1976, the Legislature enacted the Nursing Home Responsibilities and Residents' Rights Act (N.J.S.A. 30:13-1 to -17) which established the rights of many nursing home residents.
- In 1997, the Legislature acted to ensure the protection of the residents of three types of facilities – rooming houses, boarding houses, and residential health facilities – focusing on those who were afflicted by Alzheimer's disease, dementia or other related disorders (N.J.S.A. 55:13B-6).
- In 2002, the Legislature acknowledged and defined assisted living facilities as providing “apartment-style housing and congregate dining” (N.J.S.A. 26:2H-7.15) and defined assisted living as a “coordinated array of supportive personal and health services, available 24 hours per day, which promote resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings to residents who have been assessed to need these services, including residents who require formal long-term care.”
- In 2011, the Legislature enacted a bill of rights for assisted living residents (N.J.S.A. 26:2H-128(b)). Unlike all of its other enactments concerning other facilities, the Legislature neither expressly authorized nor expressly precluded an assisted living resident's right to pursue a private cause of action for the violation of rights enumerated in this bill.
- In 2016, the Legislature revised statutes pertaining to the Dementia Care Home Act (N.J.S.A. 26:2H-148), defining residents of dementia care homes and specified that those defined in this Act were not given skilled nursing care while a resident unless during a temporary illness

or a health emergency. The Act did incorporate a bill of rights for the residents of those homes, which expressly allow for a private cause of action on a breach of rights.

The appellate panel's final decision noted that while similar pieces of legislation provided private causes of action for violating a bill of rights, the 2011 bill, which was specific to assisted living residents, did not provide for such causes of action.

The panel specifically noted the varying approaches the Legislature took when establishing the 2011 and 2016 bills, a key differentiator of how residents of assisted living facilities could proceed in providing claims. The panel carefully considered the intentionality in each of these acts, noting they "are satisfied that by not expressly declaring a private cause of action for assisted living residents, the Legislature consciously chose not to create one." As the Care One facility named in the suit is governed by license as an assisted living residence, the original claim was overturned.

Assisted Living Facility Operators Must Know and Comply with State and Federal Laws

Senior care communities are, as noted above, significantly regulated by state law and are also required to comply with all applicable federal laws, particularly if subsidized with Federal money, including Medicaid. Owners and operators of assisted living facilities must be knowledgeable of their state and federal obligations as well as the structures that can protect against allegations of non-compliance and [other risk factors](#). For further information, please contact the author of this blog, [Timothy J. Ford, Esq.](#)