

Jonathan Rosenfeld's Nursing Homes Abuse Blog

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The Mentally Disabled Patients Are Easy Targets For Abuse In Institutional Settings



People who suffer from mental impairments are particularly vulnerable to abuse and exploitation including [physical abuse](#), [sexual abuse](#), [neglect](#), and financial exploitation.

A mental impairment is any mental or psychological disorder, such as [mental retardation](#), [organic brain syndrome](#) (diseases that cause decreased mental functions), emotional or [mental illness](#), and specific [learning disabilities](#).

Caregiving can be very stressful because caring for a person with a mental impairment can require a lot of time, work, and money. Sometimes this stress can cause caregivers to provide inadequate care or even abuse the mentally impaired person. This can put the mentally impaired at increased risk for neglect and abuse compared with other nursing home patients.

In 2001, President Bush established the [President's New Freedom Commission on Mental Health](#). The Commission's Interim Report to the President, it declared that "the mental health delivery system is fragmented and in disarray" and described the lack of care for older adults with mental illnesses. The Final Report contains an entire [chapter](#) on older adults and mental health. The Report states that "a substantial proportion of the population 55 and older – almost 20 percent of this age group – experience specific mental disorders that are not part of 'normal' aging."

There are several laws and programs in place to protect this vulnerable population of people who suffer from mental impairments in order to ensure that their rights are protected and they receive the best quality of care possible.

The [Americans with Disabilities Act](#) ("ADA") is in place to ensure that people with disabilities have legal protection against discrimination in the workplace, housing, and residential settings, public programs, and telecommunications. According to the ADA, you have a disability if you have at least one of the following:

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- A physical or mental impairment that substantially limits one or more major life activities
- A record of such an impairment
- You are regarded as having such an impairment

In Illinois, there are several laws and programs in place to help protect people with disabilities. These include:

- The Illinois Guardianship & Advocacy Commission
- The Domestic Abuse Project
- Illinois Domestic Violence Act
- Illinois Criminal Code

The [Illinois Guardianship and Advocacy Commission](#) protects the rights and promotes the welfare of people with disabilities. There are three divisions: Office of the State Guardian (“OSG”), the Legal Advocacy Service (“LAS”), and the Human Rights Authority (“HRA”). The OSG is appointed by the courts as a guardian for persons with disabilities as a last resort, when no other guardian is available. The LAS represents people with disabilities and hearings to enforce their rights. Lastly, the HRA investigates alleged rights violations by providers against people with disabilities.

The [Domestic Abuse Program](#) is administered by the Illinois Department of Human Services-Office of Rehabilitation Services (“ORS”). It provides a telephone number for people to report alleged or suspected abuse, neglect, or exploitation of an adult with disabilities. The program then investigates the reports and provides assistance to the abused person.

The [Illinois Domestic Violence Act](#) (750 ILCS 60) protects adults with disabilities from abuse, neglect, or exploitation from a family member, household member, personal assistant, or any other person who has assumed responsibility to provide care. A judge can enter an Order of Protection (“OOP”) if they determine that abuse, neglect, or exploitation has occurred in order to prevent further abuse and provide compensation or other remedies.

The [Illinois Criminal Code](#) (720 ILCS 5) provides criminal penalties for offenses including neglect, financial exploitation, assault, battery, sexual abuse, and home repair fraud. If certain crimes are committed against persons with disabilities, more severe penalties may be imposed (examples include: 720 ILCS 5/9-1(b)(17) murder of a person with a disability; 720 ILCS 5/11-9.5 Sexual Misconduct with a person with a disability; 720 ILCS 5/12-7.1 Hate Crime; 720 ILCS 5/12-19 Abuse and Criminal Neglect of a Long Term Care Facility Resident; 720 ILCS 5/12-21 Criminal abuse or neglect of an elderly person or person with a disability; 720 ILCS 5/16-1.3 Financial exploitation of an elderly person or a person with a disability). The Code also includes laws which make certain actions against persons with disabilities a crime, where those same actions when committed against persons without disabilities are not considered a crime.

In addition, each State has a protection and advocacy agency that receives funding from the federal [Center for Mental Health Services](#) (“CMS”) ([Protection and Advocacy for Individuals with Mental Illness Program](#) (“PAIMI”)) in order to protect and advocate for the rights of people with mental illness and to investigate reports of abuse and neglect in facilities that care for and treat mental illnesses. In Illinois, this program is [Equip for Equality](#). This program has its own

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Abuse Investigation Unit whose purpose is to prevent the abuse, neglect, and deaths of individuals with disabilities receiving services in any setting including community-based facilities and programs, nursing homes, hospitals, and state-run mental health and developmental disability facilities in Illinois.

In Illinois, residents of long-term care facilities have the right to continue living in the facility (210 ILCS 45/3-401; 42 CFR 483.12). [Involuntary discharge](#) can only occur if:

- Your medical needs cannot be met by the facility
- Your health has improved so that you no longer require the facility's services
- Your physical health or safety is at risk
- The safety of others is at risk if you remain
- You have not paid or are late paying the facility's bill
- The facility closes

If a facility requests that a resident be discharged, it must provide written notice to the resident or the resident's representative. Then, you still have the right to meet with the facility to discuss the discharge and appeal the discharge to the Illinois Department of Public Health. Therefore, a facility cannot discharge a person simply because of a mental impairment.

Mental Retardation (Developmental Disability)

An [intellectual disability](#) (or developmental disability) is a condition which causes substantial mental impairment attributable to [mental retardation](#) or a condition similar to mental retardation. People with intellectual disabilities display a significantly below-average score on a test of mental ability or intelligence and face limitations in areas of daily life. Mental retardation can result from a number of conditions including [Down Syndrome](#) (extra copy of Chromosome 21) and [Fragile X Syndrome](#) (the most common form of inherited mental retardation).

Most developmental disabilities have no cure, but therapy can help treat symptoms. If you are a caregiver for someone who has mental retardation, you may be performing the following activities for that person: bathing, dressing, feeding, cooking, shopping, paying bills, running errands, giving medicine, and providing company and emotional support.

In Illinois, the [Mental Health and Developmental Disabilities Code](#) ensures that people with developmental disabilities receive adequate and humane care in the least restrictive setting. The Code governs the procedure for the admission, transfer, and discharge of people with developmental disabilities from "developmental disability facilities" (licensed or operated by or under contract with the State of Illinois) to ensure that people with developmental disabilities receive appropriate care in the least restrictive environment.

A "developmental disability" is defined as a condition which causes a substantial impairment and which is attributable to mental retardation (intelligence quotient (IQ) of 70 or below), [cerebral palsy](#), [epilepsy](#), [autism](#), or any other condition which results in impairment similar to that caused by mental retardation. These developmental disabilities must originate before the age of 18 and be expected to continue indefinitely.

People with mental retardation should not be cared for in facilities designed to care for people with mental illness. When a person is admitted into a mental health facility, the facility must evaluate the person for mental retardation. If the person has severe mental retardation, they must be transferred to a developmental disability facility within 72 hours unless they also have a mental illness and the mental health facility can provide appropriate mental health treatment and habilitation services.

A common source of abuse is the use of restraints in inappropriate situations. People with developmental disabilities have the right to be free of restraints unless used as a therapeutic measure to prevent the person from causing physical harm to themselves or physical abuse to others. In addition, restraints require the written order of a physician, psychologist, social worker or registered nurse, unless there is an emergency requiring the immediate use of restraints.

Oftentimes, facilities use restraints on persons with developmental disabilities so they are more manageable and require less work. Developmental disability facilities and other health facilities are often understaffed, which leads staff members to resort to unnecessarily severe measures, such as restraints, to control patients. However, this constitutes abuse, unless the restraints are medically necessary.

Financial exploitation is sadly another common source of abuse when dealing with people with mental retardation. A recipient of developmental disability services has the right to possess and use their personal belongings, unless necessary to protect the resident and others from harm. In addition, a recipient of services may use his money as he chooses. More often than should be allowed, people financially exploit these vulnerable adults, who lack the mental capacity to make well-informed decisions. The Illinois Criminal Code includes a provision for the financial exploitation of an elderly person or a person with a disability ([720 ILCS 5/16-1.3](#)).

Organic Brain Syndrome

[Organic Brain Syndrome](#) (“OBS”) is a general term that refers to diseases that cause decreased mental function. Symptoms include agitation, confusion, [dementia](#) (long-term loss of brain function; [Alzheimer’s disease](#) is the most common type of dementia), and delirium (severe, short-term loss of brain function). OBS is very common in the elderly, but it is not a part of the normal aging process. Alzheimer’s disease affects about 5% of people between the ages of 65 and 74 and nearly 50% of people over the age 85. Doctors do not fully understand the cause of Alzheimer’s, but it appears to be a combination of genetic, lifestyle, and environmental factors.

Many [disorders are associated with OBS](#) including: brain injury caused by trauma, breathing conditions, cardiovascular disorders, degenerative disorders, drug and alcohol-related conditions, infections, and other medical disorders. Treatment of OBS depends on the disorder, but it mostly consists of supportive care to assist the person in areas where brain function is lost. Some disorders cause aggressive behavior which can be treated with medications.

Mentally disabled nursing home residents might be unaware of abuse or unable to report abuse because of cognitive impairment. Also, residents with moderate or severe [dementia](#) may be unable to give an accurate description of abuse or neglect.

Mental Illness

Mental illness is a mental or emotional disorder which substantially impairs a person's cognitive, emotional, and/or behavioral functioning. Common mental illnesses include depression, bipolar disorder, and schizophrenia.

Illinois has the highest number of mentally ill adults under age 65 living in nursing homes. This is in part because Illinois only has 1,480 public hospital beds for mentally ill patients since the state shut down seven state-run mental hospitals since 1980. Under federal law, nursing homes may only admit mentally ill patients if the state has determined that the person needs the high level of care the nursing home can provide. Governor Pat Quinn formed the Illinois Nursing Home Safety Task Force to improve Illinois' nursing home system and ensure the safety of residents. The task force will address the welfare of mentally ill nursing home residents after a series of assaults, rapes, and murders by mentally ill residents.

The Illinois Department of Health and Human Services' Division of Mental Health offers services ranging from intensive in-patient hospitalization to outpatient care backed by supportive housing and employment programs. The goal of the Division is to ensure that Illinois residents have access to publicly funded mental health services.

A study by researchers Brown University found that in the United States, nursing home admission rates for people with mental illness varied between the States. These variations in services and how they are admitted may result in longer-than-average stays for those individuals with mental illnesses (46% of people with mental illnesses remained in the nursing home facility 90 days after admission compared to only 24% of people who did not have a mental illness). The study suggests that this might be because Medicaid pays nursing homes a higher rate for people with mental illness who have minimal physical problems, which might provide an incentive for nursing homes to admit these patients. It also suggests that patients with mental illnesses lack a safety net, which may explain why many of them become long term care residents.

Another report from the Agency for Healthcare Research and Quality revealed that nursing home residents are likely to diagnose and treat depression. However, disparities were found in both depression diagnosis and treatment, which may indicate that certain groups of nursing home residents are not receiving the care they need. Furthermore, nursing homes usually treated depression with antidepressants rather than psychotherapy, which the study suggested might be because antidepressants are cheaper.

Learning Disabilities

Learning disabilities also put a person at risk for abuse and exploitation depending on the severity of the disability. Older adults suffering from learning disabilities might not be able to read, fully understand conversation, or have difficulty speaking and expressing their thoughts.

Learning disability ("LD") is a term that describes specific kinds of learning problems (trouble learning and using certain skills). Oftentimes, the skills most affected are: reading, writing, listening, speaking, reasoning, and doing math. Learning disabilities are life-long disabilities and

there is no cure. As many as 1 in 5 people in the United States have a learning disability, but they vary from person to person.

The federal [Individuals with Disabilities Education Act](#) (“IDEA”) defines learning disability as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” Learning disabilities do not include “learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.” (34 Code of Federal Regulations §300)

Cases of abuse, neglect, and exploitation of people with mental impairments are all too frequent despite the myriad of programs in place to protect people who suffer from mental impairments. If a family member has suffered from abuse or exploitation at the hands of a caregiver, facility, or hospital, you have legal options to seek a remedy appropriate for your case. Mental health facilities and caregivers owe a duty of care to the mentally impaired, and when this duty is breached, the person hurt by this neglect might be entitled to damages.

For two generations we have advocated on behalf of the mentally disabled who are victims of abuse. Our experience in these these cases allows us to represent the mentally disabled as compassionately and effectively as possible. We would honor the opportunity to speak to you regarding a friend or loved one who was mistreated in a: [group home](#), mental institution, [assisted living facility](#) or any communal living arrangement. All consultations are kept in the strictest confidence. (888) 424-5757

Many thanks to Heather Keil, J.D. for her thorough research in these areas.

Resources:

Centers for Disease Control and Prevention: [Intellectual Disability](#)

Mayo Clinic: [Mental Illness](#)

Illinois General Assembly: [405 ILCS Mental Health and Developmental Disabilities Code](#)

Illinois Department of Health and Human Services: [Division of Mental Health](#)

Illinois General Assembly: 720 ILCS 5 [Criminal Code](#)

[Illinois Guardianship and Advocacy Commission](#)

U.S. Surgeon General: Mental Health Report: Chapter 5 – [Older Adults and Mental Health](#)