

## **LONG-TERM CARE LITIGATION & "THE INSURANCE CRISIS"**

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Ohio's long-term care industry is well aware of the insurance and litigation crises being faced by providers in Florida and Texas, and of the national increase in frivolous lawsuits against nursing homes. In light of these crises and recent news articles focusing on the care provided in Ohio's nursing homes, many of our clients have contacted us to ask our opinion on how the long-term care (LTC) industry can respond to this growing problem. We believe that it is possible to prevent a similar situation from occurring in Ohio, but to do so our industry must act quickly and uniformly. Rather than respond to inquiries on an individual basis, we are setting forth our views in this position paper.

The first step is to identify the source of the problem. While government initiatives, press exposés, and efforts by certain lobbying groups have hurt the public perception of nursing homes, we believe that the insurance and litigation crisis is being largely driven by plaintiffs' attorneys. These attorneys sue nursing homes under the guise of forcing them to improve their quality of care, but the result has been a decreased level of resources available to care for our residents, the flight of insurance coverage, and the significant enrichment of plaintiffs' attorneys. Recognizing the source of the problem, we believe that by cooperation among all of Ohio's LTC associations and nursing facilities, Ohio providers can prevent the problems being faced in Florida and Texas from growing in our state. These are steps that our firm has recommended and that we believe would be beneficial in scaling back the tide of frivolous litigation against nursing facilities:

- (1) Statutory protection for nursing home quality assurance and peer review information needs to be enacted. In order to assure a candid and conscientious review of quality issues, Ohio law has provided hospitals with confidentiality and immunity for their peer review and quality assurance processes for over thirty years; nursing homes should be provided with the same protection for the same reasons.
- (2) Ohio's LTC industry needs to act cooperatively with the insurance industry to reach coordinated approaches to risk management and the handling of lawsuits. We believe that both industries should take a "no settlement policy" with regard to frivolous or nuisance lawsuits. While we recognize that some lawsuits are valid, it is the rash of nuisance lawsuits by plaintiffs' attorneys seeking a quick and easy payout that has led to the crisis.
- (3) Plaintiffs' attorney groups are providing seminars across the country on how to effectively sue nursing homes. The LTC industry must provide widespread education to all of the nursing homes in Ohio regarding what steps can be taken at the facility level to protect them from these lawsuits. For example, homes need to be educated on the use of arbitration clauses in their admission agreements, proper medical record release protocols, etc.

The interests of all nursing homes, all LTC trade associations, and all insurance companies doing business with LTC facilities are the same with regard to the issue of frivolous lawsuits. We offer the above strategies to help Ohio's nursing homes ensure that their valuable resources are spent in caring for their residents, and not in fighting unnecessary legal battles. Ohio's LTC industry is strong and has an existing infrastructure. We urge you as providers to consider our points, contact your colleagues and legislators, and to support your trade associations in developing a unified strategic plan to address this serious issue.

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