I. New Jersey Nursing Home Responsibilities and Rights of Residents Act, N.J.S.A. 30:13-1 to 30:13-17 (known as the “Nursing Home Bill of Rights”)


1. A person shall have a cause of action against the nursing home for any violation of this act. N.J. Stat. § 30:13-4.2

2. “Any person or resident whose rights as defined herein are violated shall have a cause of action against any person committing such violation.” N.J. Stat. § 30:13-8(a)

B. Legal Requirements to Bring Suit

1. Standing: In order to bring a cause of action under this law, the plaintiff must be:

   1) A resident of a nursing home, as defined by the statute N.J. Stat. § 30:13-2(c) or

   2) A person asserting a resident’s rights in his/her stead, such as a legal guardian


2. Duty: Plaintiffs must establish that a duty is owed to them under the statute. Plaintiff must show that the defendant violated the statute by an act or failure to act. These include but are not limited to the “Rights” ² and “Responsibilities” ³ defined by the act and any other violation of

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¹ (holding that a next-of-kin of a resident had no cause of action under the act, where they were not informed of a change in the patient’s medical condition, because purpose of the act is to advance the well-being of the patients)
² N.J. Stat. § 30:13-5 (examples: right to privacy, right to retain and use personal property, right to services of own physician, right to visitation, “not be deprived of any constitutional civil or legal right”) ³ N.J. Stat. § 30:13-3 (examples: responsibility for: maintaining records of funds, property and possessions of residents deposited at nursing home, admitting only as many residents as can adequately be given care, ensuring compliance with State and Federal statutes, rules and regulations)
requirements placed on nursing homes by State or Federal rule, regulation or statute.\footnote{N.J. Stat. § 30:13-3(h)}

3. **Breach** – Plaintiff must show that this duty was breached by an act or failure to act on the part of the defendant.

C. **Persons/Entities Excluded From Statute**

1. *N.J. Stat. § 30:13-8* states that any resident whose rights have been violated may have a cause of action against “any person committing such violation”. Although the Nursing Home Bill of Rights deals with the responsibilities of nursing homes, anyone can participate and affect the violation of these rights and responsibilities. *See Brehm v. Pine Acres Nursing Home, Inc.*, 190 N.J. Super. 103, 462 A.2d 178, 1983 N.J. Super. LEXIS 878 (App.Div. 1983) (holding that a physician was liable for a violation of a resident’s rights under *N.J. Stat. § 30:13-6*).

2. **Exception:** “Any person who reports suspected abuse or exploitation pursuant to this section or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity from any civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.” *N.J. Stat. § 30:1A-3(e)* (Suspicion of abuse or exploitation of resident of residential health care facility).

D. **Criminal Statute**

1. “A person having a legal duty to care for or who has assumed continuing responsibility for the care of a person 60 years of age or older or a disabled adult,

2. “who abandons the elderly person or disabled adult or unreasonably neglects to do or fails to permit to be done any act necessary for the physical or mental health of the elderly person or disabled adult,”

3. “is guilty of a crime of the third degree. For purposes of this section ‘abandon’ means the willful desertion or forsaking of an elderly person or disabled adult.”

*N.J. Stat. § 2C:24-8(a)* (numbers not part of statute)

E. **Preclusion of Arbitration**

Agreements to arbitrate in nursing home contracts are enforceable under the FAA (Federal Arbitration Act) because the FAA preempts any State law to the contrary, and it is necessary to enforce federal policy in favor of arbitration.

F. Relationship to Other Causes of Action

Although this private right of action exists, from the present, reported case law, it appears that such a cause of action is sparingly maintained. However, it appears that plaintiffs make use of the rights and responsibilities conferred onto nursing homes via the statute to establish a duty of care in negligence actions under the common law. See Estate of Burnett v. Water's Edge Convalescent Ctr., 2008 N.J. Super. Unpub. LEXIS 2653, 2008 WL 2841155 (App.Div. July 25, 2008).


See Lawlor v. Cloverleaf Memorial Park, Inc., 56 N.J. 326, 266 A.2d 569, 1970 N.J. LEXIS 252 (N.J. 1970) (That statute provides that every action for injury to the person caused by the wrongful neglect of another "shall be commenced within 2 years next after the cause of any such action shall have accrued.").


I. Can Regulations Establish Standard of Care:

Yes. This cause of action is based upon statutorily created standards of care, including but not limited the “Rights” and “Responsibilities” outlined in N.J. Stat. § 30:13-3 and N.J. Stat. § 30:13-5.

II. DAMAGES,

A. Damages Available

1. Actual Damages
2. Punitive Damages
3. Attorney’s fees
4. Costs of the action
5. Treble damages,

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5 Nothing in the statute nor in any of the cases cited thereto states the SOL for the cause of action under the statute.
(a) may be awarded to a plaintiff who prevails in a claim to enforce the provisions of *N.J. Stat. § 30:13-3.1* (provisions relating to Medicare, Medicaid) *N.J. Stat. § 30:13-8(b).*

III. LEGISLATION AFFECTING STATUTE

A. Pending: None

B. Anticipated: None