

Are Criminal Background Checks for Nursing Home Residents Coming?

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A recent two-week trial ended with a multi-million dollar payout from a Lancaster County nursing home to the estate of a resident that was sexually assaulted by another resident. This verdict has brought up questions as to whether criminal background checks should be required for nursing home residents.

The jury found that a nursing home and its affiliates were liable for the 2013 sexual assault of the resident. The victim died unrelated to the assault and the lawsuit was brought on her behalf by her estate.

At trial, evidence was presented that the facility knew that the assailant:

- Had been previously convicted of sexual assault
- Targeted the victim because she suffered from dementia
- Had threatened to rape a caregiver
- No longer needed the services of the facility

Despite this evidence, the nursing home allowed the assailant to remain a resident. Prior to the civil trial, the assailant was incarcerated for the sexual assault at issue.

The nursing home wrote to the Lancaster County Office of Aging (OOA) in 2010 regarding its concern that the resident-victim would be "victimized by this other resident who is a registered sex offender." The nursing home then initiated a care plan - which was included in the victim's chart - based on the recommendations of the OOA. However, the plaintiff's pre-trial memorandum asserted that the nursing home's staff appeared "to be wholly unaware of the precautions put in place by the OOA" and placed the assailant in a room that was two doors down from the victim's room.

The jury awarded the plaintiff \$7.5 million in damages against the nursing home. The jury found that the nursing home and its parent company were 85 percent at fault for the victim's injuries and damages and that the assailant was only 15 percent at fault. It further found that the conduct of the nursing home "was willful or wanton, or exhibited reckless indifference to the rights of" the victim, which would have entitled the plaintiff to additional damages if the parties did not come to a post-trial settlement.

This case brings to light an issue that is posing a problem to nursing homes across the county: abuse by convict-residents who require skilled nursing care. Connecticut has created skilled facilities for convicts only, while over the last decade, more states have adopted laws requiring background checks for those applying to live in nursing homes or assisted living facilities. Since 2004, at least 20 states have taken some action to limit former offenders' access to nursing homes and assisted living facilities. Texas, Illinois, Florida, Louisiana, Maryland and

Virginia require criminal background checks for any nursing home applicant and other states are considering similar measures. Most state initiatives have focused on sex offenders, though some include anyone convicted of a violent crime.

Currently, Pennsylvania does not require background checks of nursing home applicants, but it does require employee criminal background checks under the Older Adults Protective Services Act (OAPSA). The act forbids a nursing home from hiring an employee that has been convicted of certain criminal offenses related to endangering children, untruthfulness, substance abuse, violent crimes and sexual misconduct. However, in 2015, the Commonwealth Court held that the "lifetime employment ban" in the act, violates the Pennsylvania Constitution and is therefore not enforceable. Given this decision, it remains unclear whether the Pennsylvania legislature will seek to enact a different and enforceable version of the OAPSA, or if Pennsylvania will follow the lead of other states and enact regulations requiring criminal background checks for nursing home applicants.

If you have any questions about this decision, [please contact me](#) or any member of [Barley Snyder's Health Law](#) or [Senior Living](#) industry groups.

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