

2018

## Texas Leads in Penalized Nursing Homes

Joanne Doroshow

*New York Law School*, joanne.doroshow@nyls.edu

Follow this and additional works at: [https://digitalcommons.nyls.edu/fac\\_other\\_pubs](https://digitalcommons.nyls.edu/fac_other_pubs)



Part of the [Elder Law Commons](#), and the [Human Rights Law Commons](#)

---

### Recommended Citation

Doroshow, Joanne, "Texas Leads in Penalized Nursing Homes" (2018). *Other Publications*. 376.

[https://digitalcommons.nyls.edu/fac\\_other\\_pubs/376](https://digitalcommons.nyls.edu/fac_other_pubs/376)

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Other Publications by an authorized administrator of DigitalCommons@NYLS.

## Texas leads in penalized nursing homes

By Joanne Doroshow, For the Express-News Published 5:05 pm CDT, Thursday, October 11, 2018



Lawsuits against nursing homes are down because Texans have been stripped of legal rights. Yet Texas is second in the nation for serious deficiencies per nursing home.

---

Placing a parent or loved one in a nursing home is one of the most daunting and stressful tasks in life. Imagine trusting a facility with an elderly or disabled family member, who is injured or ill and in need of immediate care, only to discover that the home has abused or neglected them.

Sadly, this is the horrible reality for many families around the country today. And in Texas, things are about as bad as they could be.

---

## Recommended Video



Texas **leads** the nation in the number of nursing homes penalized with payment suspensions. Over the past three years, Texas has received an extreme sanction. That's 21 percent more than the number of serious deficiencies per nursing home.

These statistics suggest. According to the National Center for Nursing Home Quality Improvement, the problem is a persistent problem

throughout the industry precisely because of who lives there: patients who are “physically vulnerable and generally unable either to protect themselves” or report mistreatment they experience. New reports regularly surface about how much long-term care is deteriorating around the nation and how badly government regulation is failing. U.S. Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, recently **expressed** alarm about this.

Making matters even worse in Texas is the number of for-profit facilities, where greed and profit can have an outsized influence over patient care. **According to Texas Watch**, an astounding 86 percent of Texas nursing homes operate for-profit, again leading the nation. There are only two ways to advance patient care in facilities like this. The first is oversight and enforcement of patient protection laws. That's the government's responsibility, and it's clearly falling short. Second is access to the courts, where people can be compensated for their harm and negligent facilities can be held accountable.

Lawsuits and jury trials are important because they allow groups of folks drawn from the community to decide compensation after hearing all the evidence in a case. But that process only works if there's a level legal playing field. Unfortunately in 2003, Texas politicians upended that process, making it extremely difficult for abused or neglected nursing patients to even bring a case against a facility that harmed them.

The proof is in the statistics. Lawsuits have dropped because Texans have been stripped of their legal rights. Yet patient harm remains at epidemic levels. As a result, when residents are physically injured or abused, it's the victims and their families who bear the costs. Taxpayers do, too, as the burden of covering costs shifts to Medicare and Medicaid. In other words, everyone's paying but the responsible nursing home.

It would be one thing if making Texas nursing homes legally unaccountable was somehow worth it to help facilities afford insurance coverage (which, by the way, is not even required in Texas). But it didn't. In 2003, when Texas politicians took away patients' rights, the entire U.S. health care field was in the midst of a liability insurance crisis. This was happening everywhere in the country irrespective of a state's liability laws. That crisis ended in 2006 as the insurance market stabilized nationally. Insurance rates in every state have continuously dropped ever since. But Texans lost significant legal rights in the process.

Nursing home residents are some of the most fragile and precious individuals in our society. They depend on institutions for their literal survival. The very last thing politicians should do is remove the industry's financial incentive to protect these residents from harm. Yet that is exactly what's happened in Texas.

There's a rule most of us live by: If you break it, you need to make it right. Right now in Texas, the nursing home industry doesn't have to live by this rule. It's up to lawmakers to make it right.

*Joanne Doroshow heads the Center for Justice and Democracy at New York Law School.*

© 2018 Hearst Communications, Inc.

**H E A R S T**