

President Biden Should Rule Against Qualified Immunity for Nursing Homes

MCLEAN, VIRGINIA, UNITED STATES, July 1, 2021 /EINPresswire.com/ -- President Biden Should Rule Against Qualified Immunity for Nursing Homes

By Jeffrey J. Downey, nursing home abuse attorney serving Virginia, Maryland, and the District of Columbia

Qualified immunity is a legal doctrine that relieves a person of civil liability when they act within the scope of their duties. Most police officers have qualified immunity when they injure a suspect which makes it more difficult to pursue a lawsuit. But as I explained previously, that defense is being limited by the [Courts](#).

The Trump Administration, in one of its final acts before leaving office this past January, issued an expanded legal advisory that nursing homes and other facilities should earn this qualified immunity from Covid lawsuits so long as they made reasonable considerations about virus mitigation [measures](#). Eighteen states, including Virginia, have granted nursing homes and other long-term care facilities some legal immunity related to the pandemic. Virginia did so in April 2020.

The care delivered by for-profit nursing homes will only get worse if we start cloaking them with qualified immunity for their torts. I previously wrote about the priorities within the for-profit nursing home industry that are skewing the public perception that these nursing homes need to be protected [financially](#).

In terms of allowing qualified immunity to the nursing home industry, nursing homes already benefit from strong legal protections. Medical malpractice caps and other restrictions on pursuing nursing home negligence claims create major roadblocks for many injured victims.

The liability protections that the Trump administration rushed through last year are a direct result of efforts by strong lobby groups such as the American Health Care Association pushing for such protection. Heidi Li, Feldman, a Georgetown University law professor, was quoted by Politico in May as saying that the nursing homes' legal playbook amounts to "throwing a kind of Hail Mary" and "prolonging the game is good" if the intention is to discourage suits.

In testimony submitted before US Senate Finance Committee, David Gifford, Chief medical

officers with the American Health Care Association termed the attempt to provide consistent best practices during the ongoing epidemic “virtually impossible.” The argument the AHCA puts out is that in the midst of the pandemic is that nursing homes made a reasonable effort to protect their staff and cities.

But have they?

As of June 1st, a New York Times article has the count of those killed by Covid-19 at nearly 185,000 or over a third of all deaths, making up around 4 percent of all cases.

This count comes from the nearly 1.4 million individuals across 32,000 nursing home facilities nationwide. “Nearly One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes” - The New York Times (nytimes.com)

Nursing homes are attempting to invoke these protections from a 2005 law passed in response to bioterror threats like anthrax and infectious diseases like avian flu, and essentially shield manufacturers from legal liability under emergency circumstances.

In the sense that Covid-19 is an infectious disease, the battle over who bears responsibility for those deaths will continue. Covid-19 was not the first and will not be the last infectious disease to plague the nursing home population.

A ruling by the Biden Administration to reverse qualified immunity for nursing homes is necessary to clarify the law and protect the rights of our seniors.

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