
— ASSISTED LIVING LITIGATION

Not Quite a Nursing Home

Assisted Living, Memory Care, and the Resident Who Needed More

BY MICHELLE CARROLL · FOUNDER & CEO, LEXCURA SUMMIT

A lot of families choose assisted living without fully understanding how different it is from a nursing home. The buildings look like apartments. The brochures talk about independence and community. The staff are mostly aides, often called med techs or resident assistants, with limited nursing presence. It's designed for people who need help with some daily tasks but not round-the-clock nursing.

The legal difference is bigger than most people realize. Nursing homes that take Medicare or Medicaid live under a detailed federal rulebook with federal inspections and public star ratings. Assisted living doesn't. It's regulated almost entirely by the states, and the rules range from detailed to thin. In an assisted living case, the state rulebook in effect at the time is the starting point for the standard.

States are paying closer attention. On the night of July 13, 2025, a fire at the Gabriel House assisted living residence in Fall River, Massachusetts, killed ten residents. Investigators reported that the sprinkler serving the room where it started didn't activate, and that a contractor had flagged an overdue five-year sprinkler inspection days earlier. Many residents used wheelchairs or oxygen. The governor ordered an emergency review of all 273 assisted living residences in the state, and at least eight lawsuits followed. In May 2026, Florida enacted SB 1404, requiring any assisted living facility that serves memory care residents or advertises memory care to hold a separate memory care license, with the state's health care agency writing the rules. Other states have moved on staffing transparency, standard residency agreements, and ownership changes.

THE RESIDENT WHO NEEDED MORE

The most common theme in these cases is a resident whose needs quietly outgrew the facility. She moves in fairly independent. Over months, dementia progresses, falls start, weight drops, medications get complicated. Eventually she needs more supervision, nursing, or hands-on help than assisted living is built to give.

States usually handle this through admission and retention rules. Many list conditions a facility can't accept or keep, such as needing 24-hour nursing or being bedbound, unless it has a special license or outside home health or hospice. Facilities typically must assess residents at move-in and periodically, and write a service plan.

So the questions are: When did her needs change? Did the facility's assessments catch it? Did the service plan change? Was the family told she might need a higher level of care? Did the facility keep her, and keep billing, when its own assessments or state rules said it shouldn't?

A FICTIONAL CASE

An 81-year-old woman with Alzheimer's lives in a memory care wing. Her service plan, six months old, says she needs help bathing and dressing, walks independently, and has "occasional confusion." Over the next few months, aide notes describe several attempts to leave through exit doors, night wandering, and two falls, one with a head laceration. Nobody tells her family about the exit-seeking. One January night she walks out a door that's supposed to alarm. She's found the next morning three blocks away with hypothermia and a broken hip.

FOLLOWING THE CHANGE

Line up what the facility knew and when. The service plan says independent and occasionally confused; the daily notes say exit-seeking. Did a nurse or supervisor review those notes? Was an elopement risk assessment done? Many programs use one and many states require it. Was the plan updated after the first exit attempt, or after the falls?

Incident reports may be protected or hard to get in some states, but incidents usually leave tracks in daily notes, nurse notes, or communication logs. And most states require notice to the family or representative about significant changes, falls, and injuries. Was the family told? What did they say, and what did the facility do?

OTHER PROVIDERS IN THE BUILDING

Home health nurses, therapists, hospice teams, and outside physicians often come and go. If a home health nurse documented decline and high fall risk, did that reach the facility? One timeline showing what each provider saw, wrote down, and passed along is essential. Often one provider saw the warning signs and another was responsible for acting on them.

THE DOOR, THE BUILDING, AND THE NIGHT SHIFT

Was the door alarmed and working? When was it last tested? Did it sound that night, and who responded? Some systems log door openings and alarms. Some residents wear bracelets that alert staff or lock doors. Were they in use and working? Gabriel House is a reminder that sprinklers, alarms, evacuation plans, and the number of people on duty at night to move residents who can't move themselves are all part of resident safety.

Night staffing is often the decisive fact. How many staff were in memory care that night, and were they also covering another wing? Were they awake staff? What do their round logs show? If the plan called for two-hour checks, were they done? Many states just require “sufficient” staff, which brings you back to the residents’ actual needs. A unit where a third of the residents wander at night needs a very different night shift from one where everyone sleeps.

ONCE SHE WAS MISSING

When was she found missing, and how long after the last documented check? Did staff search the building and grounds? When did they call 911 and the family? Most facilities have a missing-resident procedure with specific steps and time limits. In cold weather, delays measured in hours can change the outcome.

MEDICATIONS

In many assisted living settings, unlicensed staff with short training courses give medications under limited nursing oversight. Wrong doses, missed doses, the wrong resident's pills, or order changes that never got carried out are common problems. The MAR, the pharmacy records, and the state's rules on who may give medications are the core evidence.

THE CONTRACT AND THE MARKETING

Assisted living is a contract. The residency agreement describes promised services, care levels and fees, when a resident can be asked to leave, and sometimes an arbitration clause. Marketing can matter too. A memory care program sold as “secure” with “specially trained staff” sets expectations you can measure against what actually happened.

CAUSATION

Here the harm is obvious. The question is what would have prevented it: an updated assessment leading to closer supervision, a different room, a working alarm, a move to skilled nursing, or timely word to the family that would have changed their choices. The facility's own policies, the state's rules, and her documented behavior over time usually answer it.

RECORDS WORTH REQUESTING

- Residency agreement and marketing materials
- Every assessment, elopement risk assessment, and service plan
- Daily care and aide notes, nurse notes, and medication records
- Incident reports, where obtainable, and family communication logs
- Door and alarm logs, maintenance and testing records, and wander-management system data
- Staffing schedules, night round logs, and staff training records
- Missing-resident policy and the search and 911 timeline
- Records from home health, hospice, and outside physicians
- State inspection reports and the state regulations in effect at the time

SOURCES

- Massachusetts State Fire Marshal, preliminary findings on the Gabriel House fire; news coverage of the July 2025 Fall River fire and the state's emergency review of 273 assisted living residences
- Florida SB 1404 (2026), Chapter 2026-102, memory care services licensure (signed May 22, 2026)
- Hansen Hunter, "2026 Assisted Living Regulatory Updates"

This newsletter is for education only and isn't medical or legal advice. The case is fictional. Assisted living rules vary by state.

ABOUT LEXCURA CLINICAL INTELLIGENCE

Lexcura Clinical Intelligence provides integrated clinical and regulatory analysis for attorneys handling healthcare litigation. If you have an assisted living or memory care case and want the resident's changing needs laid against the facility's assessments, staffing, and the state rules that applied, we'd welcome the conversation.

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