

ELDER ABUSE

in New Hampshire and Maine

A free guide for families

This free Elder Abuse in New Hampshire and Maine Guide is not designed to and does not provide medical advice, legal advice, professional diagnosis, opinion, treatment or services to you or to any other individual. This free guide provides general information for educational purposes only.

What is Elder Abuse?

- *Signs & Symptoms of Abuse*
- *Dementia & Memory Care Units*
- *Dangers of Bed Rails*

Senior Care Options

- *in New Hampshire*
- *in Maine*
- *Questions to Ask Any Senior Care Home*

Reporting Abuse

- *Community Resources*
- *Legal Remedies*



**Shaheen
& Gordon**
ATTORNEYS AT LAW

TABLE OF CONTENTS

What is Elder Abuse?	4
New Hampshire and Maine Have the Two Oldest Populations in the Country	5
Signs & Symptoms of Abuse	6
Dementia & Memory Care Units	7
Dangers of Bed Rails	9
Senior Care Options in New Hampshire	10
Senior Care Options in Maine	11
Questions to Ask Any Senior Care Home	12
Reporting Abuse & Community Resources	13
Legal Remedies	14

This free guide has been provided by the law firm of Shaheen & Gordon, P. A. to raise awareness of the tragedies that occur in nursing homes, assisted living facilities and other long-term care facilities in New Hampshire and Maine every day. Shaheen & Gordon, P. A. hopes that armed with this information, families across New Hampshire and Maine will be better prepared and know what to look for, what to avoid, and which questions to ask when it comes time to make a decision regarding their loved one's future.

WHAT IS ELDER ABUSE?

Elder abuse is a broad term that encompasses several different forms of neglect, abuse, and exploitation of an older person. There are hundreds of thousands of victims of elder abuse across America every year, and the problem is growing. Victims of elder abuse are often vulnerable, and sometimes even dependent on the very people who abuse them. The abusers may be caregivers, friends, or even family members.



Both Maine and New Hampshire have specific laws aimed at protecting elders from abuse, neglect and/or exploitation. In New Hampshire, elder abuse is defined by RSA 161-F, the Adult Protection law. In Maine, there is the Adult Protective Services Act, 22 MRS §3471. Broadly speaking, elder abuse is any action or omission that results or could result in harm to a person age 60 or older.

The most common types of elder abuse are:


- **Neglect**—disregard for the health, safety or welfare of an elder that results in injury, loss or damage.
- **Physical Abuse**—intentionally causing physical pain or injury to an elder, such as slapping or pushing.

- **Sexual Abuse**—any form of non-consensual sexual contact.
- **Emotional Abuse**—intentionally or negligently causing anguish or distress to an elder through acts such as intimidation and harassment.
- **Financial Exploitation**—any improper misuse of an elder’s finances for someone’s own benefit. Also includes fraudulent schemes aimed at vulnerable individuals, such as announcements of a “prize” or investment fraud.

Elders are especially vulnerable and less able to stand up for themselves or fight back. Depending on the circumstances, they may even have a limited or complete inability to communicate or explain the abuse they have suffered. Some elders may have disabilities or dementia, which provide opportunity for others to take advantage of them.

Tragically, many cases of elder abuse are committed by individuals who are directly responsible for a senior’s care. Elder abuse typically occurs where the senior lives, whether that is a residential home, or a senior care home such as an assisted living facility or adult residential care home.

NEW HAMPSHIRE AND MAINE HAVE THE TWO OLDEST POPULATIONS IN THE COUNTRY



Maine has the oldest population in the country, with New Hampshire just behind in second place. According to a 2012 estimate by the U.S. Census Bureau, the median age in Maine is 43.5 years. In New Hampshire, it is 42.4 years.

Maine also has the second-highest percentage of elderly (65+) in the country, with 18.24 percent of Maine's population being 65 and older. Only Florida has a higher percentage. New Hampshire has approximately the thirteenth highest elderly population percentage at approximately 15.79 percent.

Significantly, both New Hampshire and Maine are also trending towards an even older population, often referred to as the "Silver Tsunami." In 2010, 13.5 percent of NH's 1.3 million residents were 65 years or older. By 2020, it is predicted that this number will increase to 20 percent. Maine is approaching a dubious milestone – by 2020 it is expected that residents 65 or older will outnumber the young in Maine. That's 15 years ahead of the national projected date of 2035 as set by the U.S. Census Bureau. Also, in 2014, more people died than were born in Maine. By 2030, it is estimated that 28 percent of Maine's population will be 65 or older, higher than any other state. The national number is estimated at 20 percent.

The basic explanation for New Hampshire and Maine's uniquely old populations is that, around the turn of the 21st century, both states' populations stopped growing rather abruptly. In short, fewer families were moving in-state, and more families, including college students and recent graduates, were leaving for opportunities out-of-state. As the older baby boomer population stayed in state during these changes, its share of the population has greatly increased.

Still, the aging population is not a unique problem to New Hampshire and Maine – it is happening across the country, just to varying degrees. The 2010 Census recorded the greatest number and proportion of people age 65 and older in history: 40.3 million, or 13 percent of the total population. This "Boomer Generation" effect will continue for decades. By 2050, people age 65 and older are expected to comprise 20 percent of the total U.S. population. The fastest growing segment of America's population consists of those 85 and up. In 2010, there were 5.8 million people aged 85 or older. By 2050, it is projected that there will be 19 million people aged 85 or older.

The increasingly aging population in New Hampshire and Maine carries with it potential issues as it relates to healthcare. Not only are long term healthcare costs expected to greatly increase, but it is also projected that there will be a shortage of healthcare professionals.

As the aging population increases, so too does the number of cases of elder abuse and neglect. In 1980, there were 239 reports of elder abuse in New Hampshire. By 2005, the number of incidents had increased more than 600 percent to 1,460 reported cases. Yet, elder abuse largely remains a silent and hidden problem. Experts estimate that for every report of elder abuse to the authorities, between 10 and 24 incidents go unreported (see Lifespan of Greater Rochester et al., 2011). Using this estimate, there are approximately 15,000-36,000 cases of elder abuse in New Hampshire each year. The Maine Council for Elder Abuse Prevention estimates that over 33,000 of Maine's elders are abused each year.

SIGNS & SYMPTOMS OF ABUSE

It is important to be on the lookout for certain signs and symptoms:

- **Mood and/or personality change**
- **Tension between your loved one and his/her caregivers, including care home staff**
- **Mysterious injuries ranging in severity, including bruises and scars**
- **Repeated falls under similar circumstances (same time of day, same location, etc.)**
- **Unusual changes to their finances (large withdrawals, etc.)**
- **Poor hygiene and weight loss**
- **Pressure sores**
- **Fractures**

It is important that you stay aware and speak up if you suspect elder abuse or neglect. The elderly are especially vulnerable and are not always able to communicate their condition.

If the situation is serious, threatening, or dangerous, call 911 or your local police department for immediate help.

Almost 90 percent of elder abuse is perpetrated by family members. And elders who experience abuse have a 300 percent higher risk of death when compared with those who had not been abused – so be on the lookout for signs and symptoms.

DEMENTIA & MEMORY CARE UNITS



Seniors with dementia are at a greater risk of elder abuse than those without. Approximately 5.1 million American elders over 65 suffer from dementia. Close to half of all seniors over 85 have Alzheimer's disease or another kind of dementia. These numbers are expected to increase in prevalence. One 2009 study revealed that close to 50 percent of people with dementia experience abuse. A 2010 study found that 47 percent of participants with dementia had been mistreated by their caregivers.

In New Hampshire, approximately 23,000 people aged 65 or older live with Alzheimer's: 3,600 are between 67-75; 9,600 are between 75-84; and 9,800 are 85 or older. By 2020, New Hampshire's Alzheimer's population will increase approximately 13 percent to 26,000. By 2025, it will increase approximately 39 percent to 32,000. In 2013, 351 deaths were reported from Alzheimer's disease in New Hampshire, which makes it the sixth leading cause of death in the state.

In Maine, there are approximately 37,000 individuals living with Alzheimer's disease. That number will increase to over 53,000 individuals by 2020. One in eight people aged 65 and older has Alzheimer's disease, and Maine's 65-74-year-old age group is forecasted to grow by 77 percent in the next 10 years.

DEMENTIA & MEMORY CARE UNITS



It has become a popular trend for assisted living facilities and other long-term facilities to market “memory care units,” implying that they are specialized in dementia care.

Unfortunately, some facilities fail to offer anything specialized or even different in the way they care for their dementia residents.

The Alzheimer’s Association supports the enactment of state legislation regarding the disclosure of claims made by facilities relative to their Alzheimer special care units. The term Special Care Units (“SCU”) is synonymous with and/or encompasses “Memory Care” and other terms specifically targeted towards patients with dementia. The Association drafted model legislation and today at least 44 states have specific regulatory provisions for facilities serving people with Alzheimer’s disease, up from 36 states in 2002, and 28 in 2000.

The Alzheimer’s Association has also published several invaluable materials including “Dementia Care Practice Recommendation for Assisted Living Residences and Nursing Homes.”

New Hampshire has enacted very minimal Alzheimer’s-specific legislation, which merely requires the use of locks to minimize the likelihood of wandering and elopement of Alzheimer’s patients.

Maine has more stringent laws for facilities that market towards the Alzheimer’s population. For example, any Maine “entity that offers to provide or provides care for individuals with Alzheimer’s disease or a related disorder through an Alzheimer’s/Dementia Care program shall disclose the form of care or treatment it provides that distinguishes it as being especially applicable to or suitable for those individuals.” See Me. Rev. Stat. tit. 22, § 8552.

DANGERS OF BED RAILS



Between 1985 and 2009, there were 480 reported deaths involving bed rails. It is critical that especially vulnerable adults (e.g., memory problems, pain, limited mobility, etc.) be assessed often to prevent incidents and harm, such as falling or entrapment. The care aides, nurses, administrators, and entire resident care staff should be familiar with the dangers of bed rails. They should also be trained as part of orientation, continuing with in service training on an annual basis. Bed rails are sometimes misused as restraints. Practically every agency, regulation, advocacy group, and facility opposes the use of bed rails as restraints.

There is a difference between a bed rail that makes medical claims and a bed rail intended for residential and convenience purposes. If a bed rail manufacturer makes any type of medical claim

(e.g., restoring mobility or independence), it is regulated by the FDA. The FDA's Bed Rail Safety website lists the following examples: "a manufacturer labeling its bed rails to assist impaired individuals in performing daily activities or to mitigate the effects of Parkinson's disease, Alzheimer's, multiple sclerosis or other medical conditions." The FDA warns that if a manufacturer's labeling, packaging, or advertising (including print and online) contains medical claims, it is in violation of the Federal Food, Drug, and Cosmetic Act (unless it registered and listed its device with the FDA).

Portable, half-side bed rails are especially dangerous, and some critics have even called for their outright ban.

SENIOR CARE OPTIONS IN NEW HAMPSHIRE

New Hampshire's aging population has more options than ever before when it comes to care. There are several different types of senior care homes in New Hampshire, with each offering their own unique level of care and capacity. It is critical to know what level of care and what type of services to expect before placing a loved one in any of these facilities. The most common types of senior care homes in New Hampshire are:

- **Assisted Living Residence – Resident Care Facilities (“AL-RC”)**
- **Assisted Living Residence - Supported Residential Care Facilities (“AL-SRC”)**
- **Nursing Homes**

In short, these three facilities are listed above from lowest level of care to the highest. RSA 151:9 VII(a)(1) succinctly breaks down the varying levels of care offered by these three different types of facilities. AL-RC facilities “require a minimum of regulation and reflect the availability of assistance in personal and social activities with a minimum of supervision of health care, which can be provided in a home or home-like setting.” AL-SRC facilities “reflect the availability of social or health services, as needed, from appropriately trained or licensed individuals, who need not be employees of the facility, but shall not require nursing services complex enough to require 24-hour nursing supervision.” Lastly, nursing homes “provide a range of social and health services, including 24-hour-a-day supervision and the provision of medical care and treatment, according to a plan of care, by appropriately trained or licensed individuals who are employees of or who are under contract to the facility.”

New Hampshire has an uncommon approach to defining and classifying assisted living facilities. Most states license just one type of assisted living facility, which is designed for seniors who require some assistance with activities of daily living, but do not require skilled nursing care. In New Hampshire, that is precisely the purpose of Assisted Living Residence – Resident Care Facilities. New Hampshire's inclusion of AL-SRC facilities is unique and could lead to tragic misunderstandings. Even in states with just one type of assisted living facility, consumers are often misled to believe that their loved one will receive 24-hour nursing care, in part based on the facilities' marketing representations. The inclusion of AL-SRCs, a type of assisted living facility that offers a hybrid approach between traditional assisted living facilities and traditional nursing homes, could further complicate the expectations of consumers.

AL-RC facilities are very loosely regulated in New Hampshire, per New Hampshire regulation HE-P 804 Assisted Living Residence-Residential Care Licensing. AL-SRC facilities are regulated by HE-P 805 Supported Residential Health Care Facility Licensing Rules. Nursing Homes are regulated by HE-P 803 New Hampshire Nursing Home Rules, as well as RSA 151.

SENIOR CARE OPTIONS IN MAINE

Maine has a more traditional method of classifying and defining its long-term care facilities. Generally speaking, there are two types of long-term care facilities in Maine.

- Assisted Living
- Skilled Nursing

For more detailed information on Maine assisted living facilities, see Code of Maine Regulations, Title 10-144, Chapter 113: Regulations Governing the Licensing and Functioning of Assisted Housing Programs. More specifically as to assisted living facilities, the Maine Department of Health and Human Services (DHHS), Division of Licensing and Regulatory Services licenses nine types of facilities that provide assisted living services under the umbrella licensing term of assisted housing programs, namely: assisted living programs (ALPs) and four levels each of residential care facilities (RCFs) and private non-medical institutions (PNMIs). The latter two may offer the same services as ALPs but provide bedrooms rather than apartment units. The rules for PNMIs are the same as those for RCFs; they are licensed as a separate type of assisted housing program only because they receive Medicaid funding for the provision of personal care services to their residents and therefore must comply with additional requirements

as specified in various sections of the licensing rules. An adult family care home (AFCH) is a residential-style home for eight or fewer residents, which is licensed by DHHS as an Assisted Housing Program Residential Care Facility, Level III or IV, and is primarily engaged in providing services to the elderly. MaineCare, the state's Medicaid program, covers services that include personal care, medication management, and supervision. If an AFCH serves only private pay residents, it can be licensed as a Level I or Level II Assisted Housing Program Residential Care Facility.

Maine skilled nursing facilities are regulated by Code of Maine Regulations, Title 10-144, Chapter 110: Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities. Maine has much more stringent laws across the board for long-term care facilities than New Hampshire. For example, Maine requires minimum staffing ratios such as "one direct-care provider for every 5 residents" during the day shift in a skilled nursing facility. New Hampshire has no such minimum staffing requirements.

QUESTIONS TO ASK ANY SENIOR CARE HOME



1. What is the staff to resident ratio?
2. What are the staffing shifts and how does resident care change overnight?
3. How do you determine the level of care that my loved one will need? Or does every resident receive the same level of care?
4. What type of training does the staff receive and how often do they receive it?
5. How experienced are the nurses and resident care aides?
6. What happens if my loved one requires skilled nursing?
7. Ask them to explain what they mean by statements they make in marketing materials, especially “24-hour nursing care” and “memory care” or other specialized services.
8. What special care or services do they provide for residents with dementia?
9. Have you ever been cited or investigated by the State Department of Health?
10. What is your discharge policy?

REPORTING ABUSE & COMMUNITY RESOURCES



If someone is in immediate danger, do not hesitate - call 911 or the local police for immediate help.

If danger did not occur or is not imminent, report it to the appropriate authorities as soon as possible.

In New Hampshire, to report elder abuse, contact the Bureau of Elderly and Adult Services, Adult Protective Services by:

Calling: 800-949-0470 or 603-271-7014

Faxing: 603-271-4743

Emailing: apsintake@dhhs.state.nh.us

New Hampshire's Long-Term Care Ombudsman can be reached by:

Phone: 800-442-5640 or 603-271-4375

Address: 129 Pleasant St., Concord, NH 03301

New Hampshire also has an Elder Abuse Advisory Council, which is in place to help improve the protection of New Hampshire seniors from abuse, neglect, and exploitation by increasing public education and awareness.

They can be contacted through the Bureau of Elderly and Adult Services.

The New Hampshire Attorney General's Office, which includes an Elder Abuse and Exploitation Unit, can be contacted at 603-271-3658.

In Maine, to report elder abuse, contact the Office of Elder Services at:

Calling: 1-800-624-8404 or dialing 711 through Maine Relay.

Calls may be made anonymously.

Maine's Long-Term Care Ombudsman can be reached by:

Phone: 800-499-0229 or 207-621-1079

Address: 61 Winthrop St., Augusta, ME 04330

Community resources and advocacy groups include National Center on Elder Abuse (ncea.aoa.gov) and local chapters of the Alzheimer's Association (alz.org/manh).

LEGAL REMEDIES

You Have Important Legal Rights

If you or a loved one has been a victim of elder abuse or neglect, you may have a claim. At Shaheen & Gordon, P.A., our legal team assists victims and their loved ones in understanding their legal rights, investigating claims of abuse and neglect, and taking the necessary steps to pursue nursing home abuse claims and lawsuits that can hold at-fault parties accountable for their conduct and liable for victims' damages.

If you think you might have a claim, please contact us right away. You can reach us by phone at 800-451-1002 or visit us online at shaheengordon.com. An attorney will get in touch with you promptly to discuss your case. All case evaluations are free of charge, and we only collect fees if our clients receive settlements.

You May Be Entitled to Damages

The damages that may be recovered include:

- Medical bills related to treatment
- Pain and suffering
- Loss of income and/or earning capacity
- Loss of companionship or a spousal or parental relationship
- Loss of financial support
- Funeral and burial costs

Act Without Delay

Prompt action is required. The laws vary state to state, but the statute of limitations in every state requires that lawsuits be filed within certain time periods. To successfully bring a lawsuit against those who were responsible, it is important to act quickly so that none of your legal rights are lost.



William Shaheen



Michael Noonan



Christine Craig



Frances Murphy



Lawrence Vogelman



Alexander Spadinger



Randall Smith



Jared O'Connor



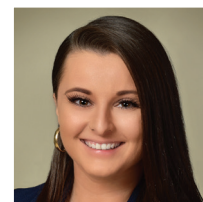
Nicholas Kline



Anthony Carr



Heather Menezes



Danielle Pomeroy



**Shaheen
& Gordon**
ATTORNEYS AT LAW



800-451-1002

Offices in New Hampshire
and Maine

WWW.SHAHEENGORDON.COM