
Stop Elder Abuse IN HAWAI‘I

A Free Guidebook for Local Families



Presented by



Galiher DeRobertis Waxman



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**This 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.*

About This Guide

BY ANTHONY CARR
EDITOR-IN-CHIEF & ATTORNEY-AT-LAW

THIS FREE STOP ELDER ABUSE in Hawai'i Guidebook has been provided by the law firm of Galiher DeRobertis Waxman to raise awareness of the tragic cases of abuse and neglect that occur far too often in assisted living facilities and other long term care facilities in Hawai'i.

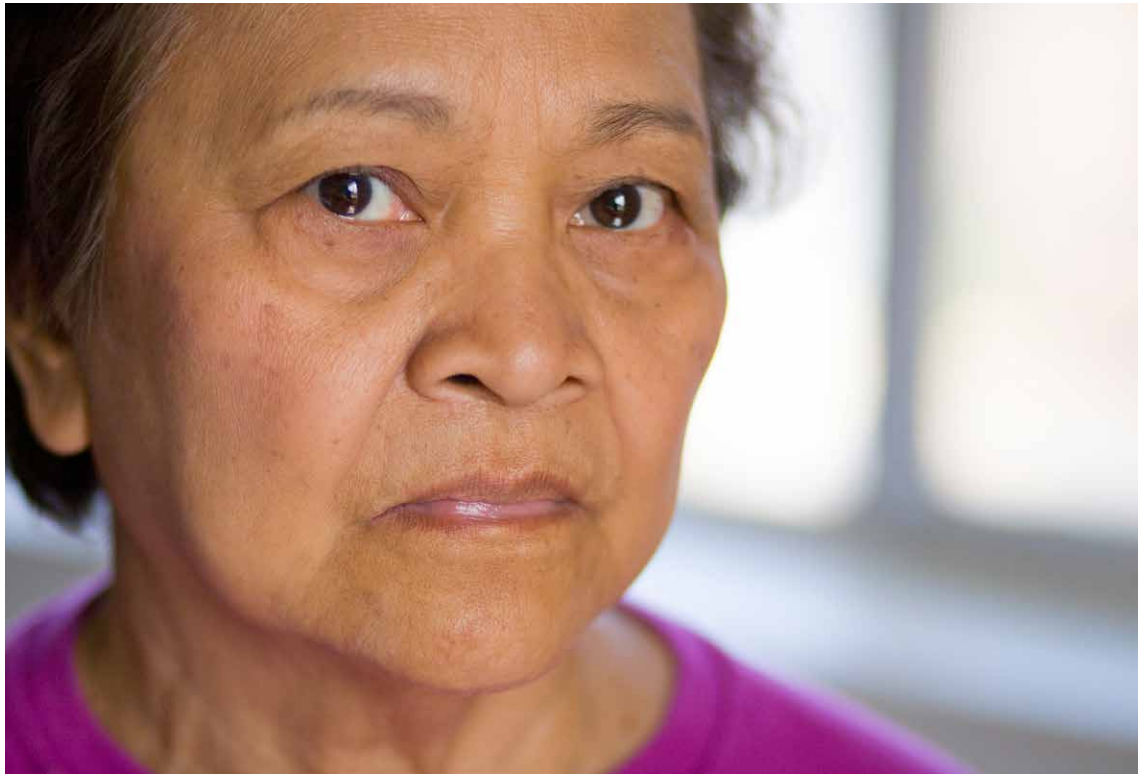
Galiher DeRobertis Waxman hopes that armed with this information, families across Hawai'i will be better prepared and know what to look for, what to avoid, and which questions to ask when it comes time to make a decision regarding their loved one's future.

We have represented several clients who have been severely abused and/or neglected at local long-term care facilities. As we learned more about senior care and elder abuse issues in Hawai'i, we became very troubled by some of the statistics. We hope that this guide will spark discussion and serve as a small step towards raising public awareness.

There are many talented and compassionate caregivers in the State of Hawai'i. This guide is not intended to be a critique of the many selfless individuals who dedicate their lives to caring for our kūpuna. Many community colleges and universities in Hawai'i offer programs that lead to a career as a certified nurse aide, LPN, or RN.

We often find that substandard care starts at the top. One of our initiatives is for greater transparency. As the market has become more competitive, too many facilities have made misleading or outright deceptive claims with regard to their services. We also call for industry to dedicate more of its resources towards resident care, including not just higher pay for more qualified individuals, but more in-service training and other elements designed to raise the standard of care. Lastly, we call for greater corporate social responsibility. We urge these facilities to recognize their critical role as caregivers of the aging and vulnerable. It is a precious responsibility whose importance greatly outweighs that of monetary profit and the bottom line.

We thank you for your interest in our Stop Elder Abuse in Hawai'i Guidebook, and for playing your part in protecting our seniors.



What Is **Elder Abuse?**

ELDER ABUSE IS A broad term which 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.

Definitions and legal standards differ widely from one state to another. In Hawai'i, HRS § 28-94 defines "abuse" as "actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment." Most of the relevant statutes in Hawai'i define an elder as someone 62 years of age or older.

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 that allow others to take advantage of them.

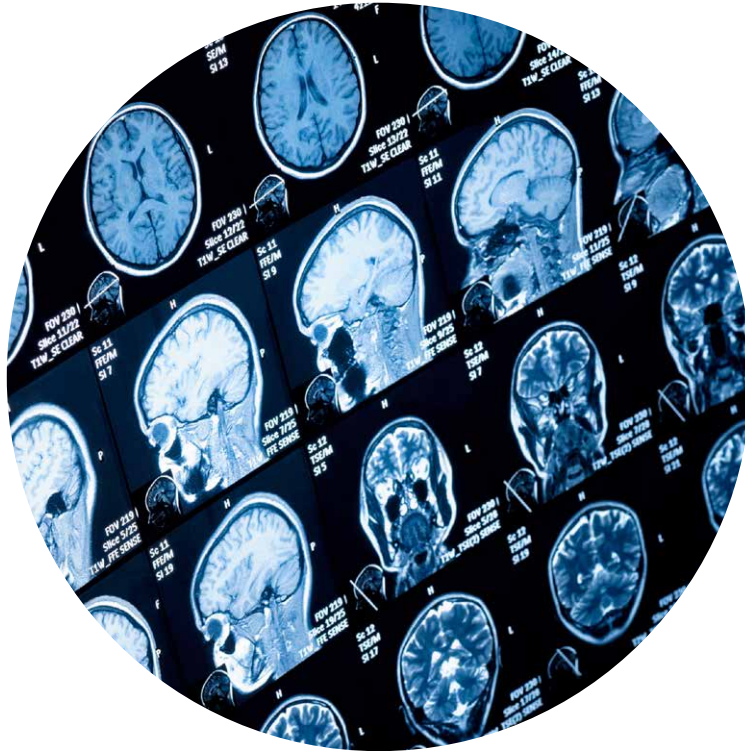
Tragically, many cases of elder abuse are committed by the individuals who are directly responsible for their care. Elder abuse typically occurs where the senior lives, whether that is a residential home, or a senior care home such as an assisted living facility or adult residential care home.

“Ability is a privilege, and as those who are able it is our duty to help those who are in need.”

Gary Galiher, Founding Partner of Galiher DeRobertis Waxman

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.



Dementia & Memory Care Units

SENIORS WITH DEMENTIA are at the greatest risk of elder abuse. Approximately 5.1 million American elders over 65 suffer from some form of 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% of people with dementia experience some kind of abuse. A 2010 study found that 47% of participants with dementia had been mistreated by their caregivers.

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 differ 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
(continued on page 6)



10,000-24,000 Cases of Elder Abuse in Hawai'i Each Year

Hawaii's Adult Protective and Community Services Branch ("APCSB"), which protects vulnerable adults from abuse and neglect, reported 801 cases of elder abuse in 2014. However, elder abuse is a "hidden" wrong as experts estimate that for every report of elder abuse to the authorities, between 10 and 24 go unreported (see Lifespan of Greater Rochester et al., 2011). Using this estimate, there are approximately 10,000-24,000 cases of elder abuse in Hawai'i each year.



Elder Care a Special Concern in Hawai'i

Between 1990 and 2012, the number of elderly aged 75 and older increased 47% nationally, compared to a 116% increase in Hawai'i. 15.6% of Hawai'i's population was 65 and over in 2013, compared with 14.1% nationally.



Elderly Populations Growing Nationally

In the United States, the 2010 Census recorded the greatest number and proportion of people age 65 and older in history: 40.3 million, or 13% of the total population. This "Boomer Generation" effect will continue for decades. By 2050, people age 65 and older are expected to comprise 20% of the total U.S. population.



85+ The Fastest Growing Age Group

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 Dangers of Bed Rails



(cont'd from page 4) their Alzheimer's 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. Hawaii is one of only a handful of remaining states that have not enacted legislation such as this. The Alzheimer's Association has published a number of invaluable materials including "Dementia Care Practice Recommendation for Assisted Living Residences and Nursing Homes."

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.

Signs & Symptoms of Abuse

Learn to recognize the warning signs

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

- ☼ **Mood and/or personality change**, unexplained withdrawal from normal activities, a sudden change in alertness, and unusual depression may be indicators of emotional abuse.
- ☼ **Mysterious injuries** ranging in severity, including bruises, pressure sores, abrasions, fractures or broken bones, burns and scars.
- ☼ **Repeated falls** under similar circumstances (same location or time of day).
- ☼ **Bedsores, poor hygiene, unusual weight loss** or unattended medical needs are indicators of possible neglect.
- ☼ Behavior such as **belittling, threats, and other uses of power and control** by caregivers are indicators of verbal or emotional abuse.
- ☼ **Strained or tense relationships**, frequent arguments between the caregiver and elderly person may also be signs of a problem.

It is also 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.

See our Report Abuse and Community Resources on pages 12-13 for more information on what to do if you believe abuse may be taking place. If the situation is serious, threatening, or dangerous, call 911 or your local police department for immediate help.

Choice!

Now More Options
Than Ever for Our
Kūpuna's Care



"Our society somehow must rise to the challenge of ensuring that all of our elders are treated with care and dignity, for the test of a civilization is in the way that it treats its most helpless members."

**Ilana K. Waxman, Managing Partner at
Galiher DeRobertis Waxman**

The most popular types of senior care homes in Hawai'i:

- Assisted Living Facilities
- Adult Residential Care Homes
- Expanded Adult Residential Care Homes
- Community Care Foster Homes
- Skilled Nursing Facilities

Senior Care Options in Hawai'i

HAWAII'S AGING POPULATION has more options than ever before when it comes to their care. There are several different types of senior care homes in Hawai'i, 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.

Assisted living facilities ("ALF") typically offer a level of care and attention that is somewhere between independent living and skilled nursing. These facilities are often private pay, although some may accept Medicaid. Many times consumers are misled to think that their loved one will receive 24-hour skilled nursing in these facilities, when in reality these facilities' marketing

materials rarely add up to the true services being rendered. Assisted living facilities are not appropriate for one who requires skilled nursing, and are “designed to respond to individual needs, to promote choice, responsibility, independence, privacy, dignity, and individuality.”

Current Regulations Provide Inadequate Protection

Assisted living facilities are very loosely regulated in Hawaii per Hawaii Administrative Rules Title 11 Chapter 90. There are currently 14 assisted living facilities licensed in Hawaii, with a count of 2,230 beds. The Plaza is the only assisted living facility with more than one location in Hawaii. Several more are either under construction or in the planning phase, so there could very well be 20 assisted living facilities by the end of the decade.

Adult Residential Care Homes (“ARCH”) are very similar to assisted living facilities in terms of standard of care. These homes are for elders “who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, but who do not need the professional health services provided in an intermediate, skilled nursing, or acute care facility.”

Senior Care a Gigantic Industry in Hawaii

There are currently approximately 500 licensed ARCH’s in Hawaii (included Expanded ARCH’s), with a total of 2,703 beds. Type I ARCH’s can house up to five residents. Type II ARCH’s allow six or more residents, but have more stringent requires regarding type of resident. The main difference between an ARCH and an ALF is that an ARCH is typically much smaller and more of a residential (as opposed to commercial) experience. The qualifications needed to obtain an ARCH license in Hawaii are stunningly minimal—

one needs to simply be a certified nurse aide over the age of 21 and take a few courses at Kapiolani Community College: <http://health.hawaii.gov/ohca/files/2013/06/Min-Qualif-for-ARCH.pdf>

Expanded Adult Residential Care Homes have a higher standard of care than traditional ARCH’s in that they are appropriate for adults who require a nursing home level of care. The term “expanded” refers to the standard of care and types of residents the facility can take on. These, too, are broken down into Type I and Type II.

Knowing the Options Could Help Make Better Decisions About Senior Care

Community Care Foster Homes are extremely similar to Expanded ARCH’s and also offer nursing home level of care. They are basically mini nursing homes, which are not “custodial” or care home-level facilities. A big difference is that under §321-481 these facilities cannot house more than three adults at any time, and only one of them can be private pay. The other one or two must be Medicaid recipients. There are currently approximately 1,145 community care foster homes in Hawaii housing approximately 2,900 residents.

Skilled nursing facilities (“SNF”) offer the highest level of care a senior can receive in Hawaii. Per Title 11 Chapter 94, SNF’s are for “patients whose primary need is for twenty-four hours of skilled nursing care on an extended basis and regular rehabilitation services.” There are approximately 50 SNF’s licensed in Hawaii with 4,507 beds.



Questions to Ask Any Senior Care Home:

- ☼ What is the staff-to-resident ratio?
.....
- ☼ What are the staffing shifts and how does resident care change overnight?
.....
- ☼ How do you determine the level of care that my loved one will need? Or does every resident receive the same level of care?
.....
- ☼ What type of training does the staff receive and how often do they receive it?
.....
- ☼ How experienced are the nurses and resident care aides?
.....
- ☼ What happens if my loved one requires skilled nursing?
.....
- ☼ 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.
.....
- ☼ What special care or services do they provide for residents with dementia?
.....
- ☼ Have you ever been cited or investigated by the State Department of Health? (Be sure to check them out on Nursing Home Compare, too: <http://www.medicare.gov/NursingHomeCompare/>)
.....
- ☼ What is your discharge policy?
.....



Reporting Abuse

IF SOMEONE IS IN immediate danger, do not hesitate—call 911 or the local police for immediate help.

If danger is not imminent, report it to the appropriate authorities as soon as possible at the appropriate Adult Protective Services (APS) telephone number listed on the next page.

If you have been the victim of abuse, exploitation, or neglect, you are not alone.

Many people care and can help. Please tell your doctor, a friend, or a family member you trust, or call Hawai'i APS or the Eldercare Locator help line immediately.

You can reach the Eldercare Locator by telephone at 1-800-677-1116. Specially trained operators will refer you to a local agency that can help. The Eldercare Locator is open Monday through Friday, 9 a.m. to 8 p.m. Eastern Time.



Hawai'i Resources

In Hawai'i, to report elder abuse, contact the Adult Protective Services agency by phone:

Oahu: (808) 832-5115

Kauai: (808) 241-3337

Maui, Molokai & Lanai: (808) 243-5151

East Hawai'i (Hilo/Hamakua/Puna): (808) 933-8820

West Hawai'i (Kau/Kona/Kohala/Kamuela): (808) 327-6280

The Long-Term Care Ombudsman Program identifies, investigates, and resolves complaints that are made by, or on behalf of residents, and related to action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of residents of long term care facilities. For information or assistance from the LTCO office, call (808) 586-7268.

The Hawai'i State Office of Health Care Assurance is responsible for licensing the various long term care facilities and enforcing regulations. You can call the State Licensing Section at (808) 692-7400.



For Seniors on the US Mainland

To Contact APS in other states, visit the **State Resources** section of the **National Center on Elder Abuse** website: http://ncea.aoa.gov/Stop_Abuse/Get_Help/State/index.aspx

The National Long Term Care Ombudsman Resource Center website is another great asset: <http://ltcombudsman.org/>

Community resources and advocacy groups include the **National Center on Elder Abuse** (ncea.aoa.gov), **UC Irvine's Center of Excellence on Elder Abuse & Neglect** (centeronelderabuse.org), the **Aloha Chapter of the Alzheimer's Association** (alz.org/hawaii), **University of Hawai'i Center on Aging** (hawaii.edu/aging), and the **Hawai'i Pacific Gerontological Society** (hpgs.org).



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.

You May Be Entitled to Damages

The damages that may be recovered include:

- ☼ Medical bills related to treatments
- ☼ Pain and suffering
- ☼ Loss of income and/or earning capacity
- ☼ Loss of companionship, or a spousal or parental relationship
- ☼ Loss of financial support

Act Without Delay

Prompt action is required. The laws vary state from state, but the statute of limitations in every state requires that lawsuits be filed within certain time periods. In Hawai'i, an injury lawsuit must be brought within two years of the incident. 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.

Galiher DeRobertis Waxman Can Help

We are a law firm with over 35 years of experience helping Hawai'i families. We've litigated several cases of elder abuse and neglect involving local long-term care facilities. Our attorneys are skilled and knowledgeable about elder law and elder abuse cases.

If you think you might have a claim, please contact us right away. You can reach us by phone at **808-597-1400** or email at **info@galiherlaw.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.

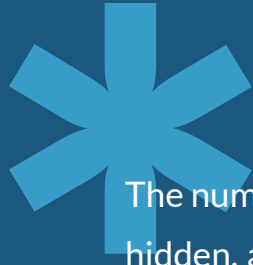
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Our Honolulu office; we're located on Maui, too!



The numbers on elder abuse are truly troubling. The problem is largely hidden, and victims often suffer in silence. However, there are certain actions that we can take to reduce the number and severity of incidents, and increase the overall standard of care across the state of Hawai‘i. We created this guide with the hope that increased awareness of the problems and solutions will lead to better care for our seniors.

In order to remedy the abuses, it will often take someone other than the victim to intervene on our *kupunas'* behalf. Having an understanding of the issues—and a little courage to step up and take action—is the key to making our society safer for seniors. By understanding the problems that exist, we can take steps to remedy those problems and make sure our elders get the care they deserve.

— Gary O. Galiher



Galiher DeRobertis Waxman



Mahalo!


Thank you for reading our Elder Abuse Guide. We are passionate about the work we do to help elders from across Hawai'i pursue accountability and get the justice that they truly deserve. If you have any questions or concerns, please drop us a line.



Galihier DeRobertis Waxman

Get in touch

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