

What is the FNHRA?

The Federal Nursing Home Reform Act (FNHRA), also referred to as the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), is the guiding statute for nursing facility law. It details what skilled nursing facilities, including nursing homes and assisted living facilities, must provide their residents.

What is § 1983?

42 U.S.C. § 1983 makes any person who deprives a citizen of a Federally granted right while acting under color of state law can be held civilly liable to that citizen.

"Under color of state law" means acting with authority of the government.

What Cases are Important?

FNHRA and § 1983 Compatibility	Health & Hosp. Corp. of Marion Cnty. v. Talevski, 599 U.S. 166 (2023).
§ 1983 Compatibility, Generally	Blessing v. Freestone, 520 U.S. 329 (1997); Gonzaga Univ. v. Doe, 536 U.S. 273, 284, 287 (2002).
QoL Provisions Enforcement	Grammer v. John J. Kane Reg'l Centers-Glen Hazel, 570 F.3d 520 (3d Cir. 2009); Rolland v. Romney, 318 F.3d 42, 53 n. 10 (1st Cir. 2003).

Who Can Be Sued?

Nursing facilities owned and operated by local or municipal governments

Who Can Sue?

Residents in nursing facilities owned by local or municipal governments

In What Jurisdictions?

Federal Courts in the Third Circuit (has already found the QoL provisions enforceable)

Includes Delaware, New Jersey, and Pennsylvania.

Federal Courts in the First Circuit (has suggested the QoL provisions are enforceable)

Includes Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.

Federal Courts in the Second, Seventh, or Ninth Circuits (have found the FNHRA generally can create rights)

Includes Arizona, California, Connecticut, Idaho, Illinois, Indiana, Montana, Nevada, New York, Oregon, Vermont, Washington, Wisconsin.

For what acts?

Government agency's policies or customs

Government's failure to train or supervise its employees

A government employee's final decision with an effect similar to a policy

For more, see Martin Schwartz, Section 1983 Litigation

What Can Be Enforced?

Right to Quality Food	Includes when food is offered and what food is offered	42 U.S.C. § 1396r(b)(4)(A)(iv); 42 CFR § 483.60.
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Right to Meaningful Activities	Includes having access to a choice of activities and those activities being meaningful	42 U.S.C. § 1396r(b)(2), (4)(A)(v); 42 CFR 483.24(c); 42 CFR § 483.10(f)-(1),(3).
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Right to be Treated with Respect and Dignity	Includes interactions with staff, as well as policies that enable staff to engage with residents	42 U.S.C. § 1396r(b)(1) (A); 42 C.F.R. § 483.10(a)(1).
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