

§7948. Right of action

1. Generally. Any resident whose rights have been violated as described in this section may commence a civil action in the Superior Court on that resident's own behalf for injunctive and declaratory relief against any long-term care facility or provider of assisted living programs and services that is alleged to be in violation of any rule described in section 7853 or 7924 or in violation of the rights enumerated in 42 United States Code, Section 1396r, Subsection (c). In order to grant a preliminary or permanent injunction under this section, the Superior Court must find that:

A. The plaintiff will suffer irreparable injury if the injunction is not granted; [PL 1991, c. 637, §2 (NEW).]

B. The irreparable injury outweighs any harm that granting the injunctive relief would inflict on the defendant; [PL 1991, c. 637, §2 (NEW).]

C. The plaintiff has exhibited a likelihood of success on the merits of the case; and [PL 1991, c. 637, §2 (NEW).]

D. The public interest will not be adversely affected by granting the injunction. [PL 1991, c. 637, §2 (NEW).]

[PL 2001, c. 596, Pt. B, §17 (AMD); PL 2001, c. 596, Pt. B, §25 (AFF).]

2. Right of action limited. An action may not be commenced under this section until 15 days after the resident has given notice of the violation and an intention to bring suit under this chapter to the commissioner, the Attorney General and each party alleged to be violating the law or rule. The court may waive the 15-day notice requirement and issue a temporary restraining order when the plaintiff shows that the alleged violation presents an immediate threat to the plaintiff's health or safety. [PL 1991, c. 637, §2 (NEW).]

3. Parties may intervene. In any action brought by the Attorney General or the commissioner under this chapter, any resident who has a right of action under this section may intervene if that resident has a direct interest that is or may be adversely affected by the action and the disposition of the action may impair or impede the resident's ability to protect that interest. The Attorney General and the commissioner may intervene in any action brought by a resident under this section. This subsection does not affect the ability of any party to take action under Title 5, section 9054.

[PL 1991, c. 637, §2 (NEW).]

4. Service. A copy of the complaint and other pleadings must be delivered to the commissioner and the Attorney General at the time of service on the defendant. Copies of all answers and other documents accompanying the answers must be delivered to the commissioner and the Attorney General at the time of service on the plaintiff.

[PL 1991, c. 637, §2 (NEW).]

5. Dismissal of action. The court may, on the motion of any party or on its own motion, dismiss any action brought under this section that alleges a de minimis violation of section 7924 or of 42 United States Code, Section 1396r, Subsection (c).

[PL 1991, c. 637, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 637, §2 (NEW). PL 1997, c. 260, §3 (AMD). PL 2001, c. 596, §B17 (AMD). PL 2001, c. 596, §B25 (AFF).

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