



Professional Liability:  
What is causing the  
premiums to increase  
and what can I do to  
control the cost ?

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### State of the Market – Senior Living Rate Predictions

GL/PL with Favorable Loss Experience and Venue	-10% to +30% (higher with adverse loss experience/poor venue)
Property with Non-Challenged Occupancies	Flat to +7.5%
Property with Challenged Occupancies	+15-20%
Workers' Compensation	-5% to flat
Auto	+5% to +10%

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# State of the Market

## COMMERCIAL LINES ARE UP 5% IN Q1 2023

According to the [MarketScout](#) Barometer, commercial property and casualty rates were up 5% in the first quarter of 2023. [CIAB](#) reports a higher average rate hike of 8.8%.



These rate hikes represent national averages. Some regions are seeing much higher increases (often due to natural disaster exposures) and individual businesses may also see quite different rates from the average.

Commercial Property	Commercial Auto	Business Interruption	BOP	General Liability
+20%	+7.3%	+4.7%	+5%	+4.3%

Umbrella	Professional Liability	D&O	EPLI
+5%	+5%	+5%	+3.7%

MarketScout says two lines saw notable changes in the first quarter of 2023: general liability and employment practices liability. General liability was up 6.7% in the fourth quarter of 2022 but only up 4.3% in the first quarter of 2023. Likewise, employment practices liability was up 6.3% in the fourth quarter of 2022 but only up 3.7% in the first quarter of 2023.

D&O lines have also seen improvement. According to [Business Insurance](#), policyholders have been seeing rate decreases due to increased capacity and competition.



Sources 1 MarketScout, 2 CIAB, 3 Business Insurance

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# State of the Market

## REINSURANCE RATES AND PROPERTY COVERAGE

Although MarketScout reported commercial property rate hikes of only 9.3% in the first quarter, CIAB reported average rate increases of 20.4%.

Reinsurance rate increases may put continued upward pressure on property rates. Reinsurance can help insurance companies manage larger-than-expected losses, but if an insurance company's reinsurance rates increase, the insurer may need to increase rates for policyholders.

This has been the case in early 2023. According to Business Insurance, property catastrophe reinsurance rates in the U.S. increased between 45% and 100% at the January 1, 2023, renewals. Commercial property insurance buyers will likely see additional rate hikes this year.

## CYBER UPDATE

Cyber is another line seeing relief. CIAB says cyber rates were up 8.4% in the first quarter of 2023.



This rate increase is much more moderate than the double-digit rate hikes seen a year ago.

## 2023 DISASTER OUTLOOK

Since natural disasters are a driving force behind rising reinsurance and property insurance rates, the 2023 disaster outlook is an important part of the current insurance landscape.

- **Tornadoes:** During the first quarter of 2023, the U.S. experienced 410 confirmed tornadoes. [USA Today](#) says this is the highest number on record.
- **Hurricanes:** The Atlantic hurricane season runs from June 1 to November 30. [AccuWeather's](#) 2023 forecast predicts 11 to 15 named storms, which is about average.
- **Wildfires:** The [National Interagency Fire Center](#) says Southern, Southwest, Rocky Mountain, and Eastern regions saw significant wildfire activity in April. Parts of the Northwest are expected to have an above-average potential for wildfire in July and August.
- **El Niño:** [NOAA](#) says the odds El Niño conditions will develop in the next couple of months stand at greater than 90%. The [Naval Postgraduate School](#) says El Niño typically brings drier weather to the Pacific Northwest and wetter weather to southern California.

## AUTO CRASH SEVERITY

Auto crash severity is another issue impacting both commercial and personal auto insurance lines. The [NHTSA](#) says 42,915 people died in motor vehicle crashes in 2021, the most recent year for which there is data. This is a 10.5% increase from 2020.

In fact, fatalities in multi-vehicle crashes are up 16%, and fatalities involving at least one truck are up 13%.



Sources 4 Business Insurance, 5 USA Today, 6 AccuWeather, 7 National Interagency Fire Center, 8 NOAA, 9 Naval Postgraduate School, 10 NHTSA

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## What carriers are focused on when underwriting your risk

Licensed Beds vs Census

Surveys

Staffing Ratio

Loss History


Geography

Age of Residents

Risk Mitigation Efforts

Staff Training

Policies and Procedures



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## Top 10 SNF Recommendations

### 2021

- Expectations Management
- Adverse Event Management
- Falls
- Arbitration Management
- Defensive Documentation
- Staff Training
- Abuse
- Satisfaction Surveys
- Customer Service
- Patient Safety—Sex Offender Checks

### 2022

- Risk Management Program
- Operational Policies and Procedures
- Fall Management
- Admission Process (Expectations)
- Human Resources
- Resident Records (Documentation)
- Elopement Management
- Environment
- Incident Reporting (Adverse Event Management)
- Customer Service



Source – Pendulum Risk Management Services

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## Top 10 ALF Recommendations

### 2021

- Quality Management
- Abuse
- Service Recovery
- Satisfaction Surveys
- Written Risk Management Program
- Administrative Oversight
- Falls
- Key Metrics Data Management
- Adverse Event Management
- Patient Safety—Sex Offender Checks

### 2022

- Risk Management Program
- Elopement Management
- Human Resources
- Operational Policies and Procedures
- Admissions
- Fall Management
- Resident Records
- Environment
- Incident Reporting
- Customer Service



Source – Pendulum Risk Management Services

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## 10) Customer Service



Documented customer service/service recovery program



Defined service standards



Documented employee training



Protocol to report service delivery failures



Employee and resident satisfaction surveys

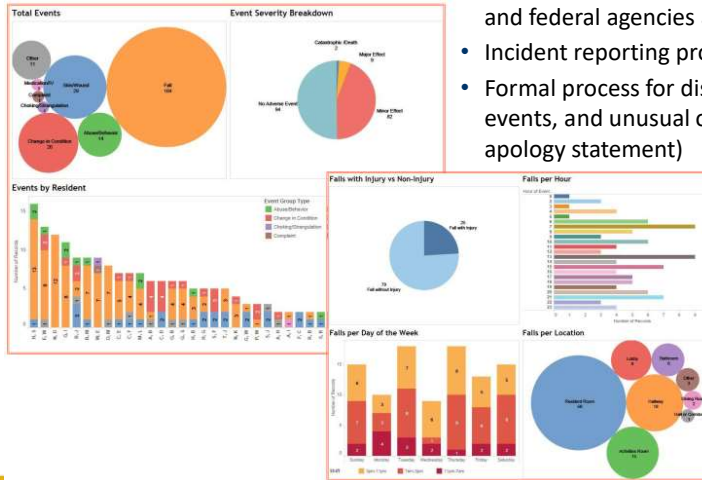


Source – Pendulum Risk Management Services

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## 9) Incident Reporting

- Formal incident management policy and procedure
- Written policy and procedure on notification of state and federal agencies and insurance carriers
- Incident reporting process in place
- Formal process for disclosure of incidents, adverse events, and unusual occurrences (making an apology statement)



- Safety committee – review trends
- Find the root cause “toddler effect”



Source – Pendulum Risk Management Services

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## 8) Environment

- Leadership rounds
- Management rounds
- Maintenance rounds
- Formal, documented checklists
- Internal facility environment is clean and odor free
- Lighting is appropriate
- Limit resident access to dangerous areas
- Egresses alarmed
- External environment is safe, well lit, secured, and free of hazards



Source – Pendulum Risk Management Services

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## 7) Elopement Management

- Semiannual elopement drills
- Written elopement policy and procedure
- Window restrictors
- Exit door alarms/notifications
- Use of an assessment tool
- Interventions at time of elopement and upon return
- Electronic monitoring sensors
- Verifying resident location after drills, activities, field trips, etc.
- Staff education and training



Source – Pendulum Risk Management Services

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## 6) Resident Records/Documentation

**Important elements of the care and services provided:**

- Change in condition, along with notifications and follow up
- Factual documentation of an event or incident, with follow-up and post-incident actions taken to prevent reoccurrences
- Critical communication, including read-back on all verbal and telephone orders and documentation of read-back communications
- Resident and family/responsible party education, with evaluation of understanding
- Process for documenting both positive and negative resident and family/responsible party feedback
- Transfer/discharge discussions with family/responsible party/resident and their response/understanding



Source – Pendulum Risk Management Services

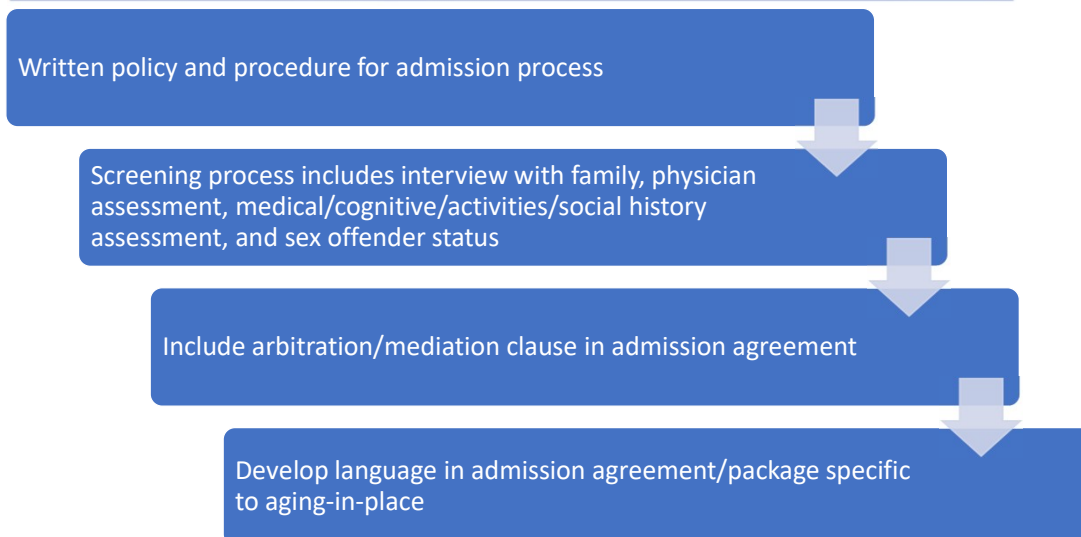
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## 5) Human Resources



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## 4) Admission Process



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## 4) Admission Process

Take your time in assessing if the new resident is a good fit. Don't feel the census pressure.

### Claims experience:

Group Home – new resident passed away in sleep, staff did not wake them to take medicine – settled for full policy limits \$1M

Group Home – Respite resident in for 2 says found non-responsive, called 911 had a head injury that no staff witnessed. Settled for \$1.75M

Group Home – New resident eloped within the first week, elopement risk was buried in the paperwork and missed by the administrator, reserves are over \$410K

SNF – Resident for 3 weeks, claim for wrongful death failing to treat pressure ulcers, no reserves yet, in discovery phase.



Source – Pendulum Risk Management Services

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## 3) Fall Management

Tracking and trending of falls, including calculating fall rate and number of falls resulting in significant injury

Written fall policy and procedure

Care planning documentation

Use of fall assessment tool

Fall management mitigation strategies

Education and training



Source – Pendulum Risk Management Services

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### 3) 10 Rules For Effective Fall Management

- 1 Communities must have well developed fall management policy and procedures. Policies and procedures should be reviewed and updated annually or as needed.
- 2 Fall policy must adhere to incident reporting policy and prompt reporting of fall incidents.
- 3 Conduct a policy and procedure fall gap analysis to determine opportunities for policy fine tuning and compliance to regulations.
- 4 Complete a root cause analysis after every fall event
- 5 Prompt reporting of fall event and post resident assessment to resident family and physician
- 6 Track and trend fall incidents to determine trends related to time of day, location, staffing and environmental and physical.
- 7 Review falls trends with safety committee, implement policy changes and environmental factors. Ensure that all fall and near miss events are reviewed on a weekly/monthly basis.
- 8 Conduct resident service plan meetings on a consistent basis and use this time as an opportunity to educate the resident and family and measure where a resident falls on an acuity scale.
- 9 Report resident condition change reviews with family to better coordinate care and determine if setting continues to be the optimal setting for resident safety.
- 10 Consider utilizing technology as a solution for fall management and prevention programs



WTW Senior Living 2022 Claims Benchmarking Study

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### 2) Operational Policies And Procedures

Develop and implement written operational policies and procedures	Conduct sex offender database checks on potential admissions and residents
Written grievance/complaint policy	Written social media/networking polices



Source – Pendulum Risk Management Services

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## The GAP

What Does the Policy/ Procedure Say?	What is General Practice?	What Happens During and After an Incident?	What are the Regulations?	Staff Education and Training	What is the "Gap"?
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## 1) Risk Management Program

Create a simple, WRITTEN risk management plan that includes identified risk management committee members and roles

Construct risk management committee meeting minutes to reflect identified issues, discussions, action plans, responsibilities, and resolutions


Maintain documentation of tracking and trending of risk data using a tracking tool or dashboard to compare month-to-month or quarter-to-quarter data, incidents, high-risk occurrences with claim potential, complaints, and compliments

Include positive written and verbal compliments from the resident and family in the medical record—not in a book in the lobby

Include such words as “Confidential: Prepared for the ongoing analysis of Quality Assurance and Peer Review” on all risk management documents (minutes of meetings, tracking and trending reports, etc.) in order to protect them from discovery

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<b>Culture Of Safety</b>	Purposeful daily, weekly, and monthly meetings
	When an event occurs, prepare an action plan as if already cited
	Confirm the safety of other residents
	Be survey ready


Source – Pendulum Risk Management Services

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## Mitigation Strategies for Staffing Shortages

- Assess associates for psychological safety
- Evaluate the effect of staffing on incidents and outcomes
- Map workloads on each shift utilize care extenders where possible and offer flexible hours
- Develop flexible action plans to deliver safe resident care during staff shortages including closing units or diverting residents
- Deliver career progression pathways to promote growth of clinical leaders within the organization
- Conduct staff surveys to improve job satisfaction
- Conduct exit interviews
- Conduct a wellbeing diagnostic
- Design a benefit programs or lifestyle accounts based on associate feedback
- Conduct a financial benchmark study to determine if your organizations benefits are competitive
- Assign associates a career specialist coach and mentor
- Consider a technology platform that assist with staff vacancies and touch points on employee satisfaction
- Be aware of Employee Assistance programs wait times and utilization of wellbeing programs


WTW Senior Living 2022 Claims Benchmarking Study

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## Mitigating Risk

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Managing Acuity

Educate family on Level of Care

Spend time on admission assessments



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**In 2021, the average cost of a claim in the assisted living environment climbed to \$267,174, outpacing skilled nursing facility claims at \$245,559.<sup>3</sup>**



CNA Aging Services Claims Report: 11th Edition, 2022

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## Causes of Loss

**Table 9: Senior Living Cause of Loss Claim Statistics**

Cause of Loss	Claims Closed with Payment	Percent of Total Claims Closed with Payment	Paid Indemnity and Expense (2023 Cost Level)	2023 Closed Claim Severity
Fall: Resident	1190	75.03%	\$225,063,968	\$189,129
Fall: Non-resident	51	3.22%	1,542,408	30,243
Fracture: Non-fall	28	1.77%	4,663,750	166,562
Skin / Wound Injury	72	4.54%	15,828,774	219,844
Elopement/ Missing Resident	14	.88%	5,005,837	357,560
Abuse	89	5.61%	24,019,749	269,885
Transfer Injury	13	.82%	2,735,429	210,418
Medication Variance	62	3.91%	6,967,613	112,381
Medical Records Request (MRR)	13	.82%	2,324,431	178,802
Infection <sup>2</sup>	15	.95%	2,547,899	169,860
No-Injuries	21	1.32%	1,364,134	64,959
Choking	18	1.13%	7,593,756	421,875



OliverWyman & Marsh 2022 General and Professional Liability Benchmark Report For Senior Living and Long-Term Care Providers March 2023

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## Senior Care Loss Trends



There was a broad-based **increase in the average cost of claims** (average total incurred) across all care settings since the 2018 Aging Services Claim Report.



The **average cost of claims in the assisted living setting** continues to **exceed** that of **skilled nursing facilities** in the 2021 dataset.



Although **independent living claims** comprise only a small portion of the overall claim volume, large loss activity has driven an **increase in the average total incurred**.



**Resident falls** and **pressure injuries** remain persistent risks in aging services settings, representing **almost two-thirds of all claims** in the 2021 dataset.



The average cost of **fall-related claims** remains the **highest in the assisted living setting**.



Sources: CNA Aging Services Claim Report: 11<sup>th</sup> Edition

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## Senior Care Loss Trends



The **average cost of fall-related claims** in the **skilled nursing setting** has shown a sharper **increase** compared to assisted living fall-related claims, driven in part by allegations of improper care.



**More than 59 percent of fall-related closed claim allegations** in the skilled nursing and assisted living settings involved a resident with a prior history of falls.



Claims in which there was a **history of a previous fall are more costly** than those with no prior history of falls.



**Dementia** is a contributing factor in **72.9%** of all **assisted living fall-related closed claims**.



The average total incurred for pressure injury-related allegations in the assisted living setting has increased by more than 67% since the 2018 dataset and has surpassed skilled nursing.



While **pressure injury claims** are less prevalent in the assisted living setting, approximately **two-thirds** of the pressure injury-related closed claims **involved the death of a resident**.



Sources: CNA Aging Services Claim Report: 11<sup>th</sup> Edition

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## Senior Care Shock Verdicts

**\$30M Total Award, incl. \$28M in Punitive Damages - TN**

Allegation: Pressure ulcers, leg amputation. Patient died two months later.

**\$28.6M Total Award, incl. \$25M in Punitive Damages - KY**

Allegation: Unknown injury following fall.

**\$13.9M Total Award - TX**

Allegation: Increased number of falls, back pain, thoracic muscle spasms and incontinence. Failure to diagnose thoracic spinal tumor resulting in paralysis.

**2022: \$15.3M Total Award, incl. \$9.2M in Punitive Damages – GA**

Allegation: Patient admitted following multiple strokes, became dehydrated and sick from an infected pressure wound. Patient died the next month.

**\$12.4M Total Award - FL**

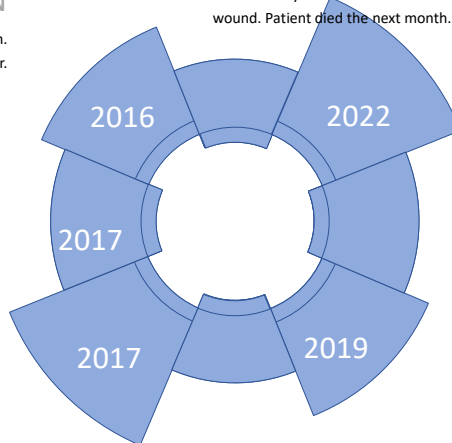
Allegation: Patient with Spina bifida recovering from broken leg. Patient developed bed sore that went to the bone, patient has severely impacted daily activities.

**2019: \$42.5M Total Award, incl. \$35M in Punitive Damages - Sacramento, CA**

Allegation: Staff began routinely medicating resident without consent. Resident choked on food, aspiration pneumonia resulting in death.

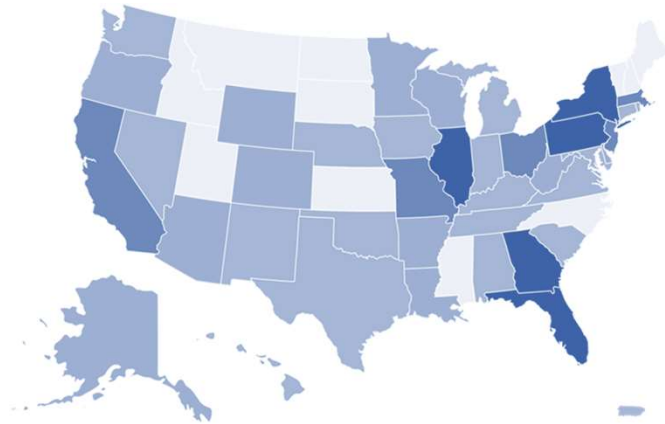
**\$11M Total Award, incl. \$6M in Punitive Damages - NM**

Allegation: Wound case in which the patient passed two years later.



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## HCL SHOCK VERDICTS / SOCIAL INFLATION - COUNTRYWIDE



Sources: MedPro Group, Various internet articles with publication dates between 01/01/2016 and 04/30/2022.

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## CLAIMS TRENDS MedPro Claims Study (January 2022)

Senior Care A Coded Case Analysis JANUARY 2022		Average total dollars paid*** per allegation by facility type		
		Skilled	Assisted	Independent
Failure to prevent falls		\$100,000	\$102,600	\$134,000
Failure to protect from assaults		\$44,400	\$150,600	\$329,300
Pressure ulcers** as an injury		\$133,100	\$99,000	N/A
Elopements		\$185,000	\$213,900	N/A



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## CLAIMS TRENDS MedPro Claims Study (January 2022)

CRICO Strategies analyzed 37,000 cases\*\* to determine which breakdowns in health care processes indicate the highest odds of a case closing with an indemnity payment.



**Administrative**  
Failure to have or follow a policy or protocol

**2.45**  
ODDS RATIO



**Clinical Judgment**  
Patient assessment failures

**1.85**  
ODDS RATIO



**Documentation**  
Absent or insufficient documentation

**1.76**  
ODDS RATIO

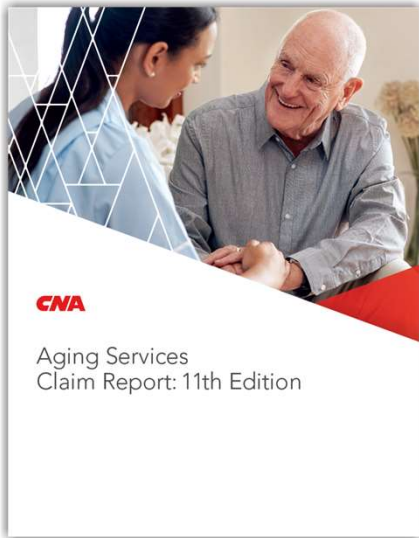


\*Not limited to senior care cases; \*\*Closed between 2014-2018; CRICO Strategies. (2020). The Power to Predict: Leveraging Medical Malpractice Data to Reduce Patient Harm and Financial Loss. Retrieved from <https://www.mf.harvard.edu/Malpractice-Data/Annual-Benchmark-Reports/The-Power-to-Predict>; MedProGroup is a member of CRICO Strategies' Community Benchmarking System (now known as Candello Compare) which represents more than 30% of all US MPL cases.



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## CLAIMS TRENDS - CNA Aging Services Claims Report (March 2022)



TOP 4 HIGHEST SEVERITY ALLEGATIONS		
1	\$360,840 Elopement	
2	\$304,920 Unsafe environment (excluding falls)	
3	\$296,215 Resident Abuse	
4	\$287,415 Failure to inform physician of change in/new condition	



Source – Pendulum Risk Management Services

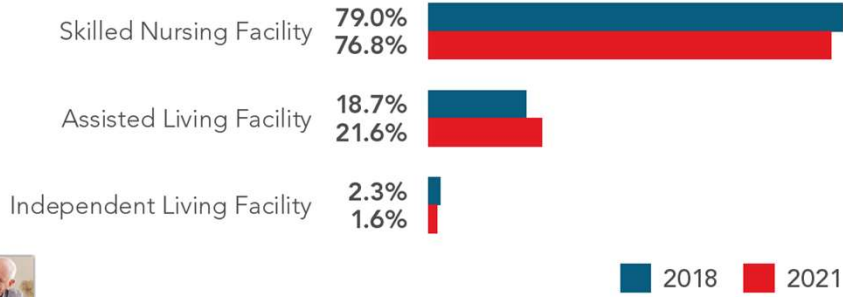
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## CLAIMS TRENDS - CNA Aging Services Claims Report (March 2022)

### Distribution of Closed Claims by Bed Type

Closed Claims with Paid Indemnity of ≥ \$10,000

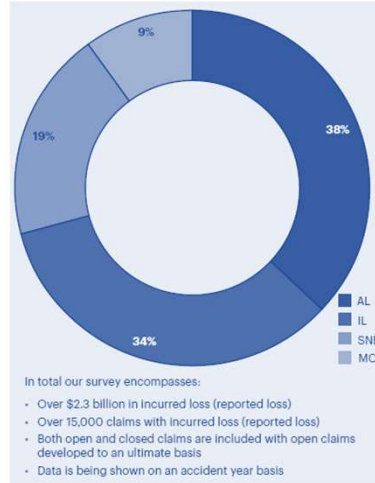
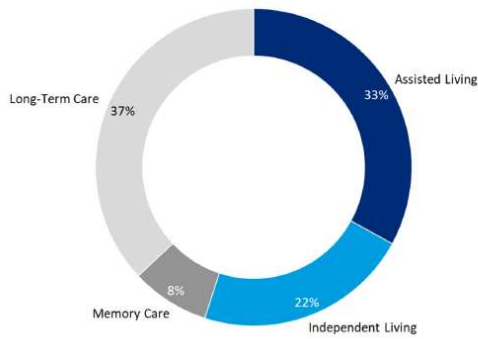


Source – Pendulum Risk Management Services

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- Assisted Living comprises 33% licensed beds, yet they account for 38% of the Liability Claims
- Independent Living comprises 22% of the available beds and account for 34% of liability claims
- The lower the acuity amounts in a higher amount of claims

Figure 1: Long-Term Care and Senior Living Unit Distribution



Source 2022 Claims benchmarking Study by WCW

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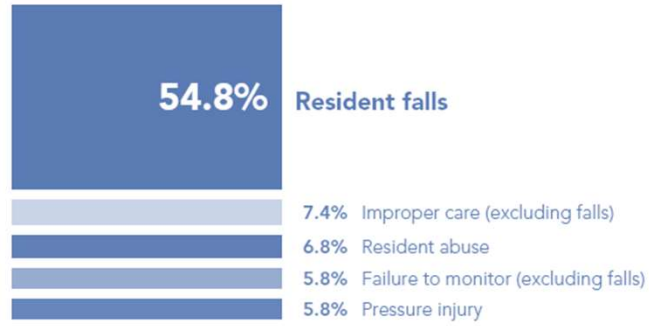
## Claims Trends

**Falls are a significant risk in assisted living**



### 7 Most Frequent Allegations – Assisted Living

Percentage of 485 closed claims



CNA Aging Services Claims Report (March 2022)

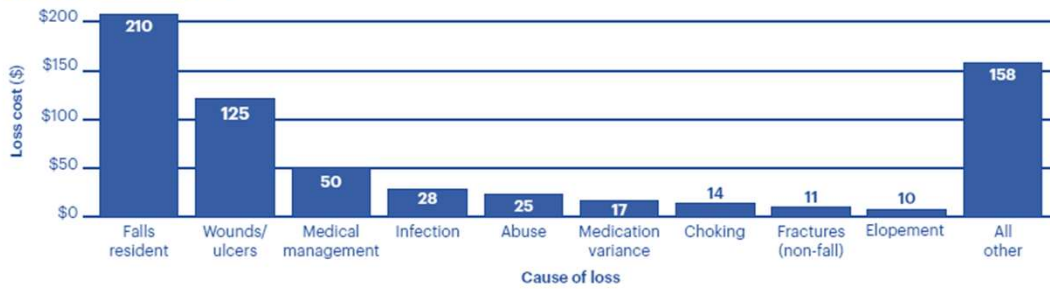
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## Causes of Loss

### Choking

- Highest severity
- Lowest frequency
- Average of \$300,000 claim
- 9% higher than the last study

Cause of loss – loss costs

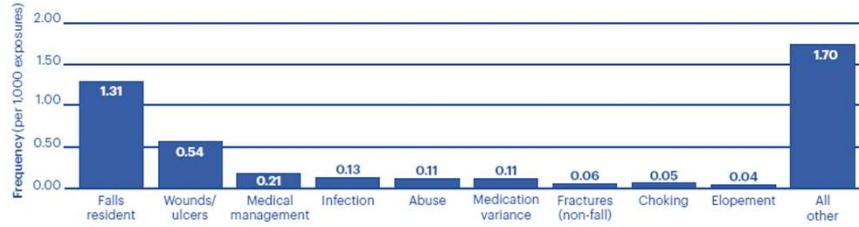


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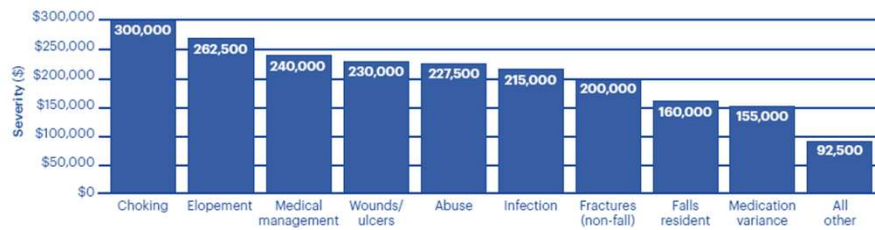
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## Causes of Loss

Cause of loss – frequency



Cause of loss – severity



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## Senior Living Indemnity and Expense Statistics

Figure 9: Senior Living Claims Counts by Closed Year

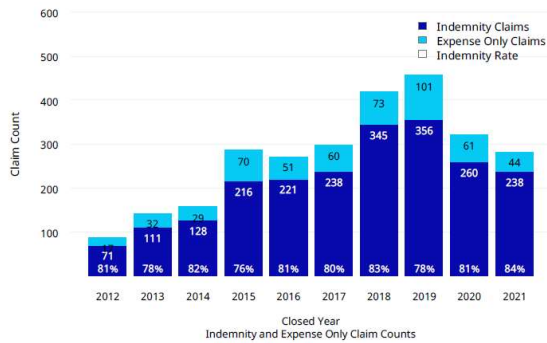
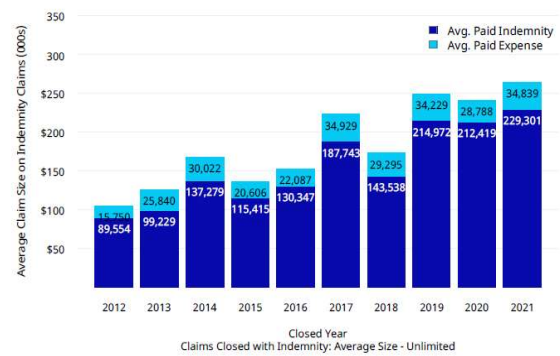


Figure 10: Senior Living Claims with Indemnity – Distribution of Indemnity and Expense



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## COVID – 19 Impact

**Table 5: Long-Term Care and Senior Living COVID-19 Claims Statistics**

Report Year	Percent of Total Closed Claims Relating to COVID-19	Percent of COVID-19 Claims Closed Without Payment	Average Indemnity Severity of COVID-19 Claims Closed With Payment	Average Expense Severity of COVID-19 Claims Closed With Payment
2020	44.40%	96.20%	\$10,728	\$5,682
2021	3.30%	73.90%	\$14,000	\$553

For all closed claims reported in year 2020, 44.4% of all closed claims (including those closed without payment) related to COVID-19. However, 96.2% of these claims closed for \$0. For those claims that did close with payment, the average indemnity cost was \$10,728, and the average expense cost was \$5,682.

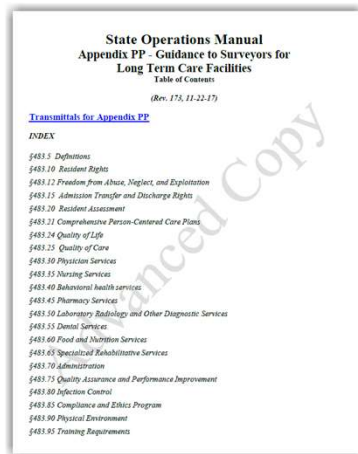
For all closed claims reported in year 2021, only 3.3% of all closed claims (including those closed without payment) related to COVID-19. 73.9% of these claims closed for \$0. For those claims that closed with payment, the average indemnity cost was \$14,000, and the average expense cost was \$553.



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## Legal Trends

### New Regulations for Arbitration Agreements (Effective October 2022)



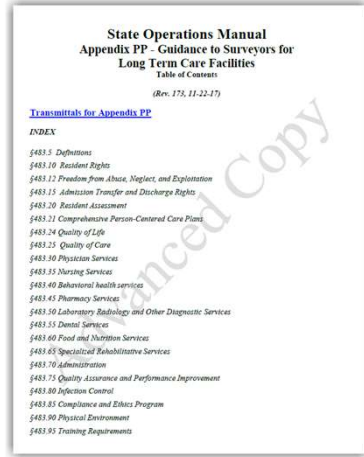
New interpretive guidance implements the regulation governing the use of arbitration agreements by facilities that went into effect on September 16, 2019.

IGs expressly state that they apply to arbitration agreements entered on or after September 16, 2019.



# Legal Trends

## New Regulations for Arbitration Agreements (Effective October 2022)



### New Tag (F847)

- Adds survey deficiency for making entry into an arbitration agreement a condition of admission or continued residency
- Adds survey deficiency for failing to explain the agreement to a resident or their representative

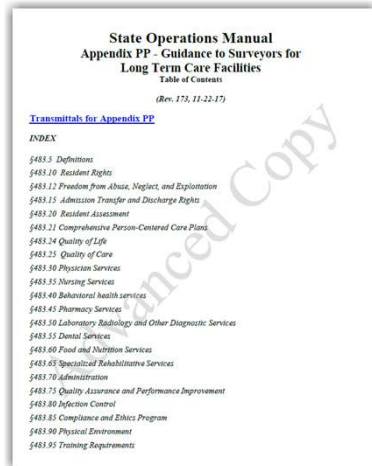


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# Legal Trends

## New Regulations for Arbitration Agreements (Effective October 2022)



### New Tag (F848)

- Adds survey citation for failing to provide for the selection of a neutral arbitrator and a convenient venue
- Requires disclosure to resident or representative of when the arbitrator or arbitration service has ruled for or against the facility

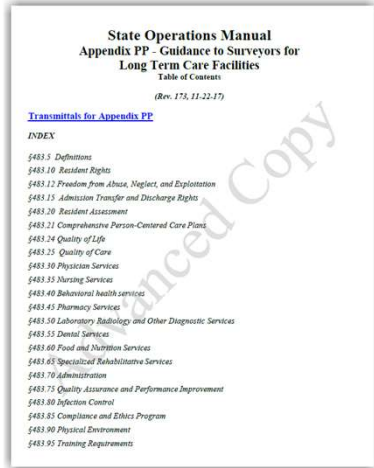


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# Legal Trends

## New Regulations for Arbitration Agreements (Effective October 2022)

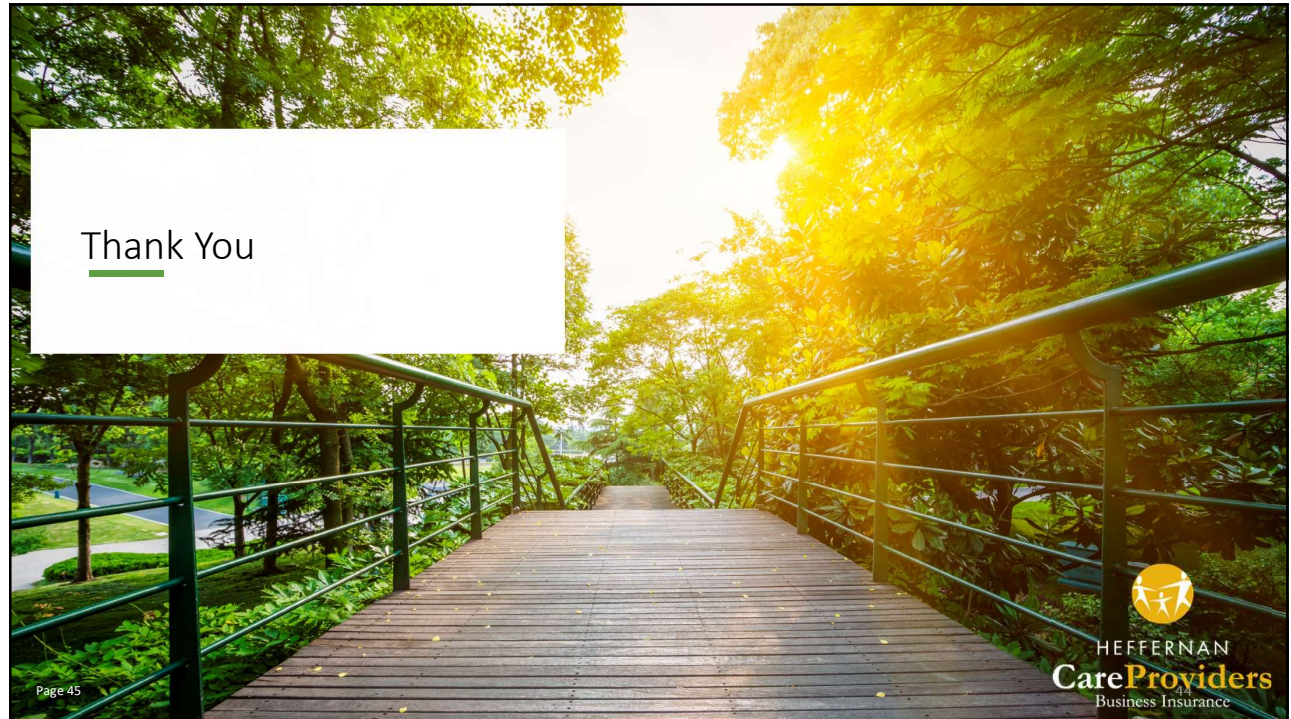


### Suggested Actions

- Review policies, procedures, language of agreements, communications with residents, families and staff for consistency with new guidance
- Legal review of agreements
- Update staff training



Pendulum Risk Management Services



Thank You

