



Selecting the Right Nursing Home

10 Things You Need to Do

Information Law Guide

INTRODUCTION

Over a decade ago, our firm began handling abuse and neglect cases against long-term care nursing facilities. Elderly nursing home residents continue to suffer malnutrition, dehydration, pressures sores, injuries from falls and psychotropic over-medication at an alarming rate. Almost all of the nursing home facilities that are guilty of providing substandard care to the elderly are certified or licensed by the state and federal governments to provide skilled nursing home care to their victims. In our experience, enforcement of the nursing home regulations by state and federal agencies is largely ineffective. Most states do not budget sufficient resources for meaningful oversight of nursing homes. The penalties imposed by state and federal agencies on the licensed operators of nursing homes are little more than a slap on the wrist. If you believe your loved one will receive safe and adequate care in a nursing home because state and federal agencies inspect or regulate nursing homes, think again.

My name is Dave Farnbauch. I have been helping families victimized by nursing home abuse and neglect since 1995. We have been successful in holding nursing homes financially accountable for the injuries and harm they have caused. As a lawyer who works with nursing home injury cases day in and day out, I've become committed to the *prevention* of nursing home injuries by holding nursing homes accountable. Your family can significantly reduce the risk of injury or death to your loved one by doing some research on the facility you are considering. Time and time again I hear families remark that they wish they had "checked out the nursing home" more carefully. I am frustrated about how hard it is for concerned families to ask the right questions before they choose a nursing home.

The decision to place a loved one in a nursing home or assisted living facility is probably one of the most difficult decisions any family will ever face. As our loved one's physical and/or mental condition deteriorates, we are frequently faced with no alternative but to have full-time skilled nursing care for our loved one. Today, more than ever, corporate nursing home operators are trying to maximize profits by reducing the number of nurses and certified nursing assistants. The truth is many nursing home facilities lack the staffing necessary to meet the needs of their residents. The following is a list of things your family needs to do to select the right nursing home or assisted living facility for your loved one.

1. IS A NURSING HOME OUR ONLY ALTERNATIVE?

Before you decide that a nursing home is the best option for your loved one, be sure that your loved one's medical condition has been thoroughly evaluated. The key to improving any medical condition is an accurate diagnosis and an appropriate treatment plan. Some people with serious and irreversible medical conditions can remain at home as long as the proper support system is in place. Most people would prefer to remain in their home if possible. Schedule an appointment with your loved one's primary treating provider (physician, nurse practitioner, or physician's assistant) to discuss the details of your loved one's medical condition. Ask the provider about the pros and cons of skilled

care at a nursing home care and the other alternatives such as home care, day care, and assisted living. Assisted living and home health care are becoming increasingly popular options. Assisted living facilities cannot provide skilled care, but many assisted living facilities have special Alzheimer's units for dementia patients that meet the needs of their residents. If skilled nursing care is needed, ask the provider whether long-term care or short-stay rehabilitation is needed. Nursing homes are required to have a comprehensive assessment of each resident's health, physical condition, mental condition, activities and relationships. The purpose of this comprehensive assessment is to determine whether the nursing home facility can meet the needs of your loved one. Keep in mind that the nursing home's comprehensive assessment is not always accurate or reliable due to the fact that in some situations it is not even a nurse making the assessment. There is considerable pressure on nursing homes (from their corporate owners) to keep the beds filled. Nursing home facilities are known to accept patients even when they are fully aware their facility does not have the resources and staffing to meet your loved one's needs.

2. WHAT ARE THE NURSING HOME OPTIONS IN OUR AREA?

If you decide, after consulting with your loved one's provider, that nursing home care is needed, the next step is to do some research on what nursing homes are in your geographic area. Most nursing homes have a listing in the "yellow pages" or telephone directory. If you have access to a computer, the Internet has an abundance of accessible consumer information about long-term care facilities. There are many websites that identify nursing home facilities in your area. Internet research is a useful starting point for information about local nursing homes. Information you gather through an Internet search does not and should not replace other types of research such as visiting a facility and talking to other families about the care their loved one is receiving in that facility. Your provider is probably a good source on which nursing homes to consider (and which facilities to avoid). If your loved one is being discharged from a hospital to a nursing home facility, talk to the hospital's discharge planner or social worker. If you have friends or co-workers who have had to place a loved one in a nursing home, talk to them about their observations or experiences with the nursing home.

One of the most important factors you should consider when choosing a facility is location. The nursing home residents who receive the best care are the residents who have regular visitors who ask questions and demonstrate concern about the resident's care. As such, it is critical to try and select a facility that is close to the relatives and friends who will be visiting your loved one.

Another factor to consider is whether the nursing home is a for-profit or a non-profit facility. Generally, a non-profit facility will have less incentive to sacrifice patient care for added corporate profit. This doesn't mean that there are not excellent long-term care facilities that are profit based, or terrible facilities that are non-profit. But as a general rule, you may be better off with a non-profit facility.

3. HOW DOES THIS NURSING HOME RANK ON THE 'NURSING HOME COMPARE' WEBSITE?

Some 1.6 million elderly and disabled Americans receive care in approximately 16,500 nursing homes across the United States. The Medicaid program, in which States set reimbursement levels, pays for the care of the majority of nursing home patients, while the Medicare program pays for care of about 10 percent of patients. The federal government provides funding to the States to conduct on-site inspections of nursing homes participating in Medicare and Medicaid and to recommend sanctions against those homes that violate health and safety rules.

Once you have come up with a preliminary list of long-term care facilities in your area, it's time to do some research on the "Nursing Home Compare" website which can be found at www.Medicare.gov/NHCompare/home. Accessing the Nursing Home Compare website is easy. On your web browser, simply type: "Compare Nursing Homes in Your Area." The Nursing Home Compare website will come up. You can search for nursing homes by state, city, county, zip code or by name on each of the 16,500 nursing homes participating in Medicare and Medicaid.

The Nursing Home Compare website was launched in 2002 by the Centers for Medicare and Medicaid Services (CMS) to provide nursing home consumers and healthcare professionals with publicly reported quality information about every Medicare or Medicaid-certified facility in the United States. The Nursing Home Compare website contains quality information for nursing homes in all 50 states. The quality information comes from resident assessment data that nursing homes routinely collect on all residents at specified intervals during their stay at the nursing home. This assessment data can be converted into quality measures that give you another source of information about how well a particular nursing home care is for residents based on their diagnosed conditions.

Nursing homes are "surveyed" (inspected) annually by government investigators and certified to make sure they meet certain state and federal health and safety requirements. If these surveys reveal deficiencies, the nursing home receives a citation. You should look at the surveys going back 3 to 5 years to determine whether the nursing home has a track record or pattern of poor care. Every state has a governmental agency that is responsible for conducting surveys. In the State of Indiana, nursing home surveys are conducted annually by the Division of Long-Term Care of the Indiana Department of Health. The Indiana State Department of Health is providing "report cards" for all certified nursing facilities within the State of Indiana. Because survey results are technical in nature, they are sometimes difficult for consumers to interpret. In an effort to make survey results more available and understandable, a summary and scoring system was created for presenting key survey results, called the "Nursing Home Report Card." Indiana's nursing home report card can be found at www.in.gov/isdh/reports/QAMIS/ltc/repcard. The information provided includes survey results compared to prior years and to state averages. The website also contains

information about a facility's name and ownership changes, federal and state licensure actions, certification status, and more.

In July of 2008, CMS launched a five-star rating system on its Nursing Home Compare website by December of 2008 to help families tell top-performing nursing homes ("5 star" facilities) from problem-plagued facilities ("1 star" facilities). According to the acting Medicare administrator, with the new rating system, nursing homes will receive one to five stars based on recent inspection results, staffing levels and a number of quality measures yet to be determined. The goal of the new rating system is to take information already available to the public and present it in a format that's easier for consumers to use and understand. Medicare officials believe the new "star ratings" will call attention to underperforming facilities and prod them to improve the quality of resident care.

4. HOW DOES YOUR LOCAL NURSING HOME "OMBUDSMAN" RATE THE FACILITY?

Most states, including Indiana, have an "ombudsman" program for long-term care. An ombudsman is a state or county government-funded advocate for nursing homes, care homes, and assisted living facilities. Indiana has a state ombudsman office as well as various regional and local ombudsman offices that cover the entire state. There is an excellent website for locating ombudsmen, namely, **www.itcombudsman.org**. State long-term care ombudsman programs are authorized by the federal Older Americans Act. This law requires every state, through the Office on Aging, to create a statewide ombudsman program to "investigate and resolve complaints made by or on behalf of older individuals who are residents of long term care facilities" (including nursing homes, assisted living and board and care facilities). The statewide program is usually composed of several regional or local ombudsman programs that operate within an Area Agency on Aging or other community organization.

While ombudsmen do not have direct authority to require action by a facility, they have the responsibility to negotiate on a resident's behalf and to work with other state agencies for effective enforcement. Ombudsmen coordinate efforts with other agencies and organizations who are concerned with elder care and provide information about long-term nursing care and related services. Ombudsmen routinely visit nursing homes and speak to residents and their families to make sure that resident rights are being protected. Ombudsmen investigate complaints affecting residents of long-term care facilities and answers questions about nursing home care and resident rights.

Your local nursing home ombudsman is a very good source of information about whether a particular nursing home has a track record of providing quality care to residents. The ombudsman has regular contact with the surveyors who inspect nursing home facilities on behalf of the state agency that licenses nursing homes. Asking the ombudsman about how many complaints they have received about a nursing home, what type of complaints they were, and whether the nursing home resolved the

complaints is valuable information to have when evaluating whether to place your loved one in a particular facility.

To locate the ombudsman for your region in the State of Indiana, contact the Indiana Long-Term Care Ombudsman office:

**Arlene Franklin
State LTC Ombudsman
Indiana Division Disabilities\Rehab Services
402 W. Washington St., Room W 454
PO Box 7083, MS21
Indianapolis, IN 46207-7083
Work: (800)545-7763
Fax: (317)232-7867**

5. A PERSONAL TOUR OF THE FACILITY – WHAT TO LOOK FOR

After reviewing the information that is available over the Internet and checking with the Ombudsman, it is time to visit the nursing homes that seem to be suitable candidates to take care of your loved one. Most nursing homes have admissions workers who will be happy to schedule a tour for you. Be sure that you are also welcome to drop in after your tour to review your first impressions. It is often helpful to visit in early evening so you see the caregiving activities on both daylight and evening shifts. Be sure to put together a “checklist” when you visit a nursing home. The following are suggestions for items that you may want to include on your checklist. These are not all-inclusive but should rather be viewed as a starting point.

Ask whether there are special care units designed to meet specific resident needs such as Alzheimer’s or dementia units, ventilator units, etc. Have the staff members received any specialized training for dementia or Alzheimer’s care? If your loved one has suffered an injury or disability that requires a physical therapy program, does the facility have a rehabilitation program in place to meet those needs? If so, does the facility have the equipment on site, or are the residents commuted to these services? How often is the rehabilitative staff at the facility? Is there a specified rehabilitation department that functions at a full-time capacity? How often can the regular staff provide exercise activities to compliment the rehabilitation?

Ask to speak to the people who are already in the facility. This includes residents and staff members. Many nursing home accidents/injuries occur because of a lack of supervision. Pay particular attention to this issue by trying to talk to a resident, if possible. Be very careful about facilities that try to prevent you from freely walking around the facility or talking to residents who are willing to talk to you. Visit the facility at different times of the day. Sometimes a facility can look adequate in the morning when the staffing level is usually the highest. Try going during the evening or on the weekend. Nursing homes’ staffing levels are usually the worst on the weekends or between 4pm and 8pm on the weekdays. When talking with staff, determine whether they seem friendly, open and honest. Ask them if they could change anything, what would it be?

Do they have family members residing in long-term care? Are they in this facility? If not, why? For the most candid answers speak to them when their supervisors are not present. When talking to residents, ask them what they would change about the facility. Ask how long they've been there, and if they plan on staying. Are requests for assistance by residents/families responded to in a timely manner? For example, how long does it take staff to answer a call bell or light?

Nursing homes are required to hold periodic "care plan" meetings. The nursing home obtains the resident's health history and reviews the resident's current physical and mental condition to prepare a written plan of care. The resident (if he or she is competent) or the resident's family has the right to take part in planning for the resident's care along with the nursing home staff. The care plan is a critical component of quality nursing home care. Ask whether care planning meetings are held at times that are convenient for residents and family members? Are letters sent to families inviting them to participate in care plan meetings?

Ask for a list of activities provided that week. Most long-term care facilities provide various activities in an effort to keep their residents stimulated. This is important for purposes of maintaining good physical and mental health. See if they have a bulletin board with a list of activities. Do they have outside activities or field trips?

Ask to attend a meal, and see if you can sample the food. Is cold food cold and hot food hot? Is the dining room attractive and conducive to eating. Is eating assistance offered to residents who need help with eating? Often, the assistance provided by the staff to residents in the dining room is a good reflection of the staffing patterns in the facility. How many residents does the staff member attempt to feed at one time? Does the staff member sit down when trying to feed a resident? Does the menu accommodate the specific dietary and/or ethnic needs of the facility's residents? Does the facility have a dietary/nutrition specialist who monitors the menu? Do they have multiple choices on the menu? Do residents routinely have input into the menu selection?

6. WHAT ABOUT FINANCING?

Ask about the financing of your loved one's stay. It will be important to determine whether the nursing home accepts insurance coverage, Medicare, Medicaid, or is private pay. Most nursing homes accept Medicare if they meet the eligibility requirements, however some nursing homes do not. Stand alone assisted living facilities will not accept Medicare. Under limited circumstances they may accept Medicaid, under a process called Medicaid waivers.

In most situations Medicare will only pay for nursing homes for the first 100 days of a stay within a calendar year after a three midnight stay in the hospital. Thereafter, you will have to arrange for alternative funding. If your loved one has assets of any kind, they may have to "spend down" to show that they meet the eligibility requirements for Medicaid. These requirements may differ from state to state.

It is important to consider whether a nursing home will be able to continue providing services if you run out of financial resources necessary for private pay placements. You may wish to discuss this with a financial advisor familiar with long-term care issues.

It is important to ask what services will be covered by insurance and what is paid for privately. For instance, television cable services, hairdressing, and telephone service charges often vary widely as well as incontinence care products, wound dressing products, and personal hygiene care products such as toothpaste and soap.

7. ASK THE NURSING HOME WHETHER THEY HAVE A FORCED ARBITRATION CLAUSE IN THE ADMISSION AGREEMENT

All nursing homes will insist that the resident or the resident's family (in cases where the resident is not competent) sign a written agreement or contract regarding the resident's care. This contract will control your loved one's legal rights while in the facility. Unfortunately, there is a very disturbing trend in the nursing home industry. Even before your loved one moves into a nursing home, families are asked to sign an agreement that limits a resident's ability to sue the nursing home for abuse and neglect. I am talking about "forced" arbitration agreements. More and more nursing homes are trying to force families to agree that any dispute will not be handled in the courts, but, instead, will be resolved by a private "arbitrator," often of the nursing home's choosing.

Many nursing home facilities are now inserting a clause into the contract that requires the parties to "arbitrate" any and all legal claims that the resident (or the resident's family) has against the facility. Arbitration is a form of private dispute resolution. Arbitration is a binding procedure. It is often administered by a private organization that maintains lists of available arbitrators and provides the rules by which the arbitration will be conducted. By agreeing to arbitration, the parties are waiving their fundamental, constitutional right to a trial by a jury of their peers. They can have no second trial after they have gone to arbitration. The arbitrator's decision is legally binding and non-appealable.

As attorneys who represent victims of nursing home abuse and neglect, there is nothing more frustrating than learning that a family has signed a nursing home admission agreement that contains a forced arbitration clause. There is a reason why nursing homes insert forced arbitration clauses into the admission contract. Forced arbitration clauses limit your family's ability to sue the nursing home if they provide abusive or negligent care. **THIS IS WRONG!** Forced arbitration clauses deprive the resident and the resident's family of a fundamental right for every American citizen to bring a case in court if he or she believes a wrong has been committed. **You should insist that any arbitration clause waiving your legal rights be taken out of the agreement.** If the nursing home will not remove the forced arbitration clause, you should probably reconsider the nursing home.

8. ASK THE NURSING HOME WHETHER THEY CARRY LIABILITY INSURANCE

Virtually all responsible businesses and professionals carry liability insurance. Hospitals carry liability insurance. Physicians carry malpractice insurance. Insurance sales representatives carry “errors and omissions” coverage. Lawyers carry malpractice insurance. You need to find out, before your loved one moves into the nursing home, whether the nursing home carries liability insurance. Here’s why:

Increasingly, for-profit nursing homes are choosing to forego paying premiums for liability insurance coverage. Remarkably, many nursing homes, both large and small, carry no liability insurance whatsoever! Even more alarming is the fact that many states (including Indiana) do not require nursing homes to carry liability insurance. Consider this: the State of Indiana requires each and every motorist to carry a minimum of \$25,000 of liability insurance in order to drive a car on public highways. What about the owners of nursing homes? Are they required to purchase liability insurance to assure residents and their families that the nursing home will be financially responsible for injuries and harm to residents? The answer is no! In the State of Indiana, and in many other states, the owners of licensed nursing homes have absolutely no legal obligation to purchase any liability insurance coverage for injury or death caused by the negligence of the nursing home staff. I’m not kidding!

Instead of purchasing liability insurance coverage, many for-profit nursing home operators are hiring corporate lawyers to create a maze of shell corporations that are designed to prevent families from discovering and identifying the persons or entities who actually own the nursing home facility. Nursing home owners funnel the home’s profits to shell corporations that are separate from the corporation that actually holds the facility’s operating license.

Before your family decides on a particular nursing home facility, ask the administrator of the nursing home to provide you with a photocopy of the “declaration page” for the home’s liability insurance coverage. The declaration page will identify the liability insurance carrier, the policy number, and the amount of the coverage. If the nursing home administrator tells you that the home is not covered under any liability insurance policies, start looking elsewhere. The fact that a nursing home does not carry liability insurance may be an indicator that they have had serious problems with abuse or neglect lawsuits in the past and have been “dropped” by their insurance company. It may also indicate that the nursing cannot afford liability insurance. If the nursing home cannot afford the premiums for liability insurance, they probably cannot afford to adequately staff the facility.

9. ARRANGE FOR AN IN-PERSON INTERVIEW WITH THE ADMINISTRATOR

Our experience representing victims of nursing home negligence has taught us about the importance of adequate staffing. Most all injuries and harm to nursing home

residents is directly related to a lack of trained nursing staff on the resident's floor. Ask about the staffing for each shift (day shift, evening shift, night shift) at the facility. Find out how many registered nurses and certified nursing assistants (CNA's) are on duty each shift. Compare the number of RN's and CNA's to the number of residents. If there is less than one CNA for every 6 to 8 residents on the day shift, there is likely to be a problem with understaffing. Ask the administrator whether the state regulations require certain "minimum" staffing levels for nurses and CNA's. Compare the state minimum staffing levels to the staffing levels at the nursing home.

One of the most pervasive problems in nursing home care is staffing turnover. Find out how long the administrator has held his or her position. Ask how many administrators the nursing home has had during the last 5 years. If the average tenure of a nursing home administrator is only 6 months, you can bet there are problems at the facility. The same holds true for the nursing home's director of nursing (DON). The director of nursing plays a very important role in overseeing the clinical nursing care that is delivered to nursing home residents. If a nursing home has a high rate of turnover with its director of nursing position, there may be problems with resident care.

Another common problem in nursing homes is "continuity" of the nursing staff. It is important for the nursing staff to get to know a resident's health condition and personality in order to provide care that is tailored to the resident's needs. Many nursing homes rely very heavily on temporary staffing agencies to provide nursing care. Find out what the turnover rate is for nurses and certified nursing assistants. Ask the administrator whether the nursing home relies on temporary agencies for staffing, and, if so, how often. A facility that routinely uses temporary employees may have a problem with employee turnover and a shortage of nursing staff.

10. AFTER YOU HAVE CHOSEN A NURSING HOME...VISIT OFTEN

Even if you have done all your homework and take all the steps suggested in this report, that still does not guarantee that your loved one will receive the proper care he or she deserves. Once your loved one enters the facility, you and your family members will need to visit as frequently as possible to assure that good care is being provided. If your family is visiting your loved one on a regular basis, you can observe, first hand, what type of care is actually being delivered. Likewise, your family can establish a rapport with the nursing staff caring for your loved one. If the nursing staff knows that the care of your loved one is a very high priority with your family, and that members of your family will be at the facility on a regular basis to check up on the care, you will significantly reduce the risk of neglect and abuse. Above all, don't be afraid to move your loved one if the care is not satisfactory.