



THE CAREGIVER'S GUIDE

*Choosing the Right Nursing Home in Florida and
What to do if You Suspect Abuse or Neglect*

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This guide is offered only for general information and educational purposes and not for the purpose of providing legal advice or legal opinions. Every reasonable effort has been made to ensure the information presented in this guide is accurate. It is not possible, however, to address every conceivable fact, situation or legal issue in a guide format. Additionally, laws often change and specific fact situations may require the application of a different rule of law. Therefore, you should contact an attorney if you need advice on specific legal issues.



PREFACE

One of the most important decisions you will make as a caregiver is finding the right care facility for someone you love.

Whether your loved one is a spouse, parent, sibling, friend or neighbor, finding the right facility requires research and time, two things that many caregivers do not have to spare.

Yet, finding the right home when you cannot continue providing care is vital for your loved one. If he or she has a condition that requires specific, long-term care, the facility must be able to meet those needs.

It can be overwhelming to look for a facility, and difficult to put your trust in someone else to provide care. This book aims to assist you in the decision process and help you feel confident and reassured. It will also address how to handle any problems or care issues you may encounter.

Oftentimes caregivers find themselves having to make a decision very quickly – an injury that requires a hospital stay, or an existing medical condition that rapidly worsens. These emergency situations are addressed in Chapter 1 of this book, along with information and tips to help you in the process.

Unfortunately, even facilities with stellar reputations can abuse or neglect

residents. Once you find a facility that you like, you need to be aware of red flags and what to look for regarding proper treatment and attention. Your loved one may be afraid to speak up, or not in a position to help themselves.

If your loved one is already living in a long-term care facility, this book will be an important tool to ensure that they are receiving appropriate care.

If you believe your loved one has suffered or is currently suffering from neglect or abuse, it's up to you and those in your support system to take action and ensure it stops.

You are their advocate.

Finding the right attorney to represent you is equally as important as spotting problems. Knowing the legal process and your options for these cases could help you protect your loved one.

This book will equip you with the knowledge to make informed choices – the initial research, facility tours, and associated costs – and handle any problems – identifying red flags, being aware of how your loved one is treated, and following the legal process – should legal action be required against a facility.

CHAPTER 1

WHEN TO START YOUR SEARCH



There are many things to consider during your search for the right assisted living facility or nursing home, and it can be overwhelming.

Research takes dedication and time; you have to know what questions to ask, and be observant during your search.

The best time to start your search is when you recognize that your loved one will need the services of a long-term care facility. This can start as early as a dementia diagnosis. Or, you may feel increased concern about your loved one's safety at home, such as a risk to falls.

However, you find yourself in situations that force a quick decision, like an unexpected injury that requires assistance or treatment you cannot provide. You may realize that it's no longer realistic to care for your loved one full-time at home. The safety of both your loved one and you can be at risk if you wait too long.

Remember, this is about your loved one receiving the proper care.

This chapter goes over the three most common situations you may find yourself in when you start looking for a facility: Searching in advance, moving away from home care, and emergencies.

STAGE 1

Being Proactive

The best situation a caregiver could be in when searching for an assisted living facility or nursing home is when a loved one does not yet need that level of care. When a caregiver can be proactive, they have a reasonable amount of time to conduct the search. Also, they're not forced into a quick decision or left feeling emotionally unbalanced. Accidents happen, but being proactive means being better prepared, even if emergency placement is required.

Caregivers can visit a facility to see what it looks like, how it is run, and get an idea of what a good facility looks like versus a bad facility.

The further ahead a caregiver can be in knowing the options, the better chance they will feel comfortable and happy with the facility decision.

CAREGIVER TIP 1

Be proactive, not reactive. It's never too early to start looking for a long-term care provider if your loved one will need a higher level of care. The longer you wait to evaluate your options, the more likely you will be forced to make a decision in an emergency situation.



STAGE 2

Receiving Some Degree of Care at Home

Another situation caregivers often face is when they provide some degree of care or assistance at home, and recognize that, at some point, their loved one will need a level of care the caregiver cannot provide. Looking at facilities at this stage is even more important if the loved one has a progressive disease, like Alzheimer's disease. Sometimes they will progress quickly from needing limited help to requiring full-time care.

Many spouses take care of their ill or disabled partner at home. Healthy spouses eventually become sick, worn out, or unable to do everyday tasks, such as getting groceries and cleaning the house. The healthy spouse may even feel trapped. This is not good. If something happens to the caregiver, the family must make an emergency decision.

When a family reaches the point where both spouses' health is at risk, they will need the help of an assisted living facility or nursing home. Researching facilities before the physical and mental demands become too much means having more time to gather information and make a reasoned decision.

It's also common to see an extended family member or neighbor care for an elderly or injured person. However, this person is usually not around enough to provide adequate care and assistance. The lack of time the caregiver has for someone needing partial or full-time care can place a loved one in danger. Anyone requiring help with meals and moving around needs a full-time caregiver, and a facility should be chosen to meet those needs.

STAGE 3

Emergencies

The final situation that requires a caregiver to find a nursing home or assisted living facility is an emergency situation. Emergencies occur when a loved one is admitted to the hospital for a surgery, fall, accident or other situation where they will need to be discharged to a care facility.

When a loved one will be having surgery, caregivers should take time to research and tour facilities. Don't wait until the end of the hospital stay to start looking. When a loved one will need rehabilitation or long-term nursing care after an unexpected hospital stay, caregivers are at the emergency stage and have to find a facility quickly. This situation happens a lot, and it can be very stressful for the caregiver to focus on finding the right place.

A social worker at the hospital can help, but caregivers should not depend on them to find a facility. Social workers won't necessarily find the best facility for a loved one. They have large caseloads and may be incentivized to suggest certain facilities.

Additional research help from family, friends or neighbors could decrease the pressure on the caregiver.

In emergency situations, the first choice facility might not have a bed available. Caregivers should remember that it's still a good move to get on the preferred facility's waiting list. Frequently, beds become available a few days later and caregivers can move their loved one in at that time. Waiting lists are discussed further in the chapters that follow.



CHAPTER 2

THE DIFFERENCES BETWEEN FACILITIES

Once you recognize the need to find a facility, the next step is to figure out what type of facility meets your loved one's needs.

Significant differences exist between independent living facilities, assisted living facilities and nursing homes. These range from little and no care to complete, full-time, skilled nursing care. You know what level of care your loved one needs, and can assess which care facility is the best fit.

It's important to note that many caregivers choose their facility type based only on cost. Cost, and how to pay for care, will be discussed in other chapters. Cost actually may not be as much of an issue if you involve an elder law attorney early in the process.

Assisted living can cost less than a nursing home, but that doesn't mean it's the right place for your loved one. An assisted living facility that does not offer the proper level of care can be harmful to your loved one's health and well-being. They may not get the treatment and care they need.

Memory care units are often needed for people moving into full-time care facilities. These units are for residents with cognitive diseases like Alzheimer's, where certain safety precautions are required. Memory care units are often a separate area or wing. The unit doors remain locked so residents don't wander off, get lost or get injured.

Memory care units can be found at both assisted living facilities and nursing homes. Usually the nursing homes will be appropriate for someone with cognitive issues (like dementia) plus some additional medical need, like COPD or weakness.



TYPES OF FACILITIES

INDEPENDENT LIVING FACILITIES



Starting with the lowest level of care.

INDEPENDENT LIVING FACILITIES (ILF): These facilities are marketed more than the others, and are similar to senior apartments. They may provide a meal plan and light housekeeping for a monthly fee. It's common for residents to still have their driver's licenses. ILFs are ideal for those who do not require much supervision. Usually a manager is on duty, but ILFs are not heavily staffed with nurses or aides that provide care.

The cost is typically between \$2,000 and \$3,000 per month. Facilities with similar levels of service and care include the Department of Housing and Urban Development (HUD) senior communities.

ASSISTED LIVING FACILITIES



Moving up to a higher degree of care.

ASSISTED LIVING FACILITIES (ALF): Full-time caregivers help residents with limited daily activities, make sure they take their medications, and check on them. Essentially someone watches over the residents and notices changes in their health that will require additional care. Some ALFs have memory care units. Most Florida ALFs will help with daily living activities such as dressing, bathing and assisting transfer from bed to wheelchair. Occasionally, the ALF administrators will discuss with the family if a higher level of care is required, and facilitate transfer to a more appropriate facility.

ALFs typically have only a single nurse, usually an LPN, and in most locations, the aides are not required to be CNAs.

ALFs cost more than ILFs because of the additional care and assistance, averaging \$4,500 to \$6,000 per month or more.

CAREGIVER TIP 2

Make sure you understand and carefully evaluate the type of care facility your loved one needs. This will save time on your search, and avoid potentially dangerous situations down the road.



NURSING HOMES



And the highest degree of care.

NURSING HOMES (SNF): Nursing homes are more like hospitals when compared to ALFs. Nursing homes provide a higher degree of nursing care. If 24-hour skilled nursing assistance is needed, nursing homes are the right choice. Skilled staff members help with a range of daily activities, depending on the resident, including therapy, administering medications, assisting with meals, dressing, showering and using the bathroom.

People are often admitted to a nursing home for rehabilitation services. After a certain amount of time (around 3 months), if the resident still requires help with most daily activities, they will move to a long-term care unit within the same home that is providing rehabilitation services.

Given the level of care, nursing homes are more expensive than independent and assisted living facilities. In Florida, the average cost is around \$8,000 per month.

CONTINUOUS CARE RESIDENTIAL COMMUNITIES



CONTINUOUS CARE RESIDENTIAL COMMUNITIES

(CCRCs): These facilities are often referred to as a “hybrid” or “all inclusive” type of care setting. CCRCs provide a wide range of care, from independent to skilled nursing, all under one roof. Because of the level of care, CCRCs typically require a six-figure, non-refundable fee to move in.

Additionally, they require a monthly fee similar to that of other care facilities. It’s a pricey option, but CCRCs promise to continue providing care, even if the money runs out.

Understanding the differences between the types of facilities is important to making the right decision for your loved one. If they don’t get the care they need, you may end up doing more harm than good.

CHAPTER 3

HOW TO FIND A FACILITY

After you've learned about the differences between facilities, it's time to find and research those that meet your loved one's needs. Sadly, most facilities are chosen within 24 hours of being told that a person needs to go to a nursing home. Learning as much as you can beforehand is important.

There are many things to consider and information to process, which can be time-consuming. If you feel stressed, overwhelmed or uncertain in your ability to find the right facility, ask for help from other family members or friends. Remember, being proactive in your search will pay off in the long run and help you to feel confident with your decision.

First, you should understand the state requirements that facilities must meet.

WATCH LISTS: Florida's Agency for Healthcare Administration, the regulatory agency in Florida, publishes a "Watch List" of nursing homes that have been in significant trouble. If a nursing home is on this list, it has currently or previously been in danger of losing its license.

CARE PLANS: The law requires SNFs to create a personalized, comprehensive care plan for each resident. Care plans outline the needs of the resident, and are updated as their condition changes. If the needs aren't clearly identified, the resident may not get the care they require. ALFs complete a level of care document, which is not comprehensive.

NURSE STAFFING MINIMUMS: Many facilities staff to the state minimums plus one extra nurse. This seems like they've done something good, to (barely) exceed the minimums. However, this can be a bad sign. The minimums mean staffing is stretched. Caregivers are likely overwhelmed from taking care of too many residents. By law in Florida, facilities are required to staff to the needs of residents, not just required minimums. However, some states do not even have minimum staffing levels. Unfortunately, it is uncommon to see facilities greatly exceed the minimums.

However, the not-for-profit and religious-affiliated facilities will often exceed the state minimums because there's no profit incentive for them to staff the bare minimum.

FACILITY OWNERS: Knowing who owns the care facility can provide some insight into how the facility will be run. When a facility is owned by an equity or hedge fund, it is typically driven to turn a large profit. Many facilities that are owned by equity or hedge funds encounter problems because of the pressure to save money wherever possible. This can result in fewer staff, lower quality food, discontinuation of supplements, and an overall lower level of care.

HERE ARE SOME TIPS FOR FINDING THE RIGHT FACILITY:

TIP #1: ASK AROUND

One of the first steps in your search is to ask friends, family, church members and co-workers if they've had any experience with looking for a facility, or if they have a loved one in a home. You may be surprised to learn how many people have gone through this before.

Firsthand experience goes a long way in helping you find the right facility. A facility that someone recommends may meet your needs. Or you learn about past issues and complaints and avoid one with a bad reputation.

Take note of how long it's been since your referrer had their experience at the facility. Nursing home ownership and management change regularly, which can greatly affect care and outcomes.



TIPS FOR FINDING THE RIGHT FACILITY



TIP #2: SEARCH ONLINE

Many websites offer valuable information on facilities. Online sources can help you create a list, as well as determine a facility's reputation and whether it will meet your loved one's needs. You will want to look online at Florida's Agency for Health Care Administration (AHCA), Medicare, Duval County Clerk of Courts, and Google.

AGENCY FOR HEALTH CARE ADMINISTRATION (AHCA): Visit www.floridahealthfinder.gov and click on "Nursing Homes," then click on "Find a Nursing Home" to find information from the AHCA. Each facility has a page that lists the owner, administrator, and whether the nursing home has ever been on a watch list. The most important pieces of information on this website are the state and federal surveys that indicate any citations that have been issued. Review the surveys from the last two years for violations.

AHCA also investigates complaints to determine whether they are legitimate, often with the use of a small-scale complaint survey. Serious complaints to watch for include lack of staffing, lack of proper care plans, and residents not receiving help with activities, such as at meal times.

When a facility is cited for a violation, the page will include who will correct it and what they will do to prevent it from happening again. The facility administrator is usually the person responsible. If you

notice a different person listed as the administrator for each survey, it's a sign of high staff turnover and that management could be unstable.

The facility you choose should have the cleanest survey results, meaning the fewest deficiencies of the lowest scope and severity. If it has any violations, they should be minor ones, like the facility being dirty. Don't let minor issues distract you from the important ones: Those that relate to how the residents are cared for and treated.

MEDICARE: Find Medicare online at www.medicare.gov/. Scroll down to "Find a Nursing Home." Here you will learn how each facility is rated, based on a five-star system. Along with ratings, you will see staffing levels and care outcomes, and where the facility rates in these areas. The Medicare website also lists the facilities' owners, operators and managing employees.

Something important to consider is that some facilities do not provide all of the necessary documentation to the federal government to be accurately rated. Those facilities get higher ratings than they should. But the site is still good for your

research. The federal government is addressing these concerns, which should improve the ratings accuracy of the website.

CLERK ONLINE RESOURCE EPOTAL (CORE): The website for the Duval County Clerk of Courts office is <https://core.duvalclerk.com/>. You can search care facilities to see if lawsuits have been filed against them. A lack of results does not mean no lawsuits have been filed. Some facilities use arbitration agreements, a red flag discussed in Chapter 6. However, searching for local lawsuits is still worth the time.

We recommend you go to the Clerk of Courts' office. The documents from a lawsuit filed by a member of the public won't be available online – but they will be at the physical office. If you are working with an elder law attorney at this point, ask him or her to search and obtain the records. Attorneys have access to electronic records.

GOOGLE: Search Google for each facility you are considering to find any newspaper articles, reviews and government investigations. When you get the owner's name, search for them as well. You will find a lot of valuable information in these searches, and it's an easy step that could greatly affect your decision.

TIPS FOR FINDING THE RIGHT FACILITY

TIP #3: LOOK FOR PATTERNS

As you research facilities, look for patterns that show the facility is not well-run or suitable for caring for your loved one. Note regular complaints about staffing, feeding, care plans and other serious concerns, and avoid these facilities.

TIP #4: DON'T DEPEND SOLELY ON THE SOCIAL WORKER'S REFERRAL

Social workers, or discharge planners, at hospitals can help arrange your loved one's discharge, and will provide you with recommendations for specific facilities. While social workers are caring people, they might not have the time to make a fully informed and independent recommendation. They typically have a large caseload, are heavily marketed to by facilities that aren't necessarily good, and may be pressured to fill up beds. While not all social workers experience this stress and pressure, it is best to not solely depend on them to arrange the discharge to a facility.

Placement services do the same work as social workers. Many of these representatives are paid a fee for referring patients. Ask them if this is the case and, if so, be wary of what they recommend.

TIP #5: CONSIDER THE HELP OF PROFESSIONALS IF NEEDED

If you're not confident or comfortable making the decision about where your loved one should be placed, you don't have to do it alone. Geriatric care managers are typically former nurses and social workers. They will assist you in finding a facility, evaluating your loved one's condition, and even creating a care plan so the facility can meet their needs. They charge either a flat fee or hourly rate. Again, ask them if facilities compensate them for recommendations.

TIP #6: GET FIRSTHAND EXPERIENCES FROM RESIDENTS

If possible, talk to a current or former resident of the facility you're considering. Someone in your community, friends of friends, or someone at your church may have spent a few months in a facility after an injury and can provide you with valuable information. First-hand experience goes a long way to feeling secure in your choice. If the facility has a Family Council, you can request their contact information to inquire about their thoughts and feelings regarding their experience with the facility.

TIP #7: LOOK CLOSE TO HOME

Research the facilities in your area. The closer your loved one is to your home, the more you will be able to visit. However, never sacrifice quality care for location. If you must look further outside your area to meet the needs of your loved one, do it without hesitation. Keep in mind that there is no greater way to protect and support a resident than to visit often and at varying times, keeping records of care.

TIP #8: GET ON WAITING LISTS

Often there are no available beds at the best facilities in your area, so get on the waiting lists now. You may be told it could be months until your loved one's name is chosen. Although you might have to begin with a facility that is not your first choice, it's extremely common for a bed to become available at your top facility within a few days or a week.

Please note that, once your loved one's name is chosen, the nursing home will usually give you a small window of time – a few hours to decide on placement.

TIP #9: SET UP TOURS

What to ask and look for during tours is discussed in the next chapter, but at this stage you will want to set up tours at all facilities you are considering. Seeing where your loved one may live and speaking with the staff will have a big impact on your decision.



CAREGIVER TIP 3

Thorough investigation and research will help you make the best placement decision for your loved one. Don't just accept the choices a hospital social worker gives you. Do your own research. Tour each facility in person before agreeing to place your loved one.

CHAPTER 4

WHAT TO ASK AND LOOK FOR WHEN YOU TOUR FACILITIES



It is extremely important to personally tour all facilities you are considering, to know what questions to ask, and what to look for during your tours. Set up two visits, one during the week around meal time; and one on the weekend, unannounced, preferably at dinner. You can tell a lot about a facility by seeing how meal time goes, and the number of weekend staff compared to weekday staff.

GET TO KNOW THE FACILITY OPERATIONS STAFF

While it's not possible for you to meet everyone on the facility operations staff during a tour or visit, you want to meet and speak with key staff members:

WHAT TO ASK AND LOOK FOR WHEN YOU TOUR FACILITIES

- **Admissions Director:** This is your first point of contact, the person who will answer your initial questions and may give you a tour. The Admissions Director has responsibilities over residents, including admitting residents, reviewing requests, providing all of the information new residents need (their rights, how the facility is run, etc.), explaining programs, and discussing finances and resident contracts.
- **Administrator:** Administrators manage the clinical and administrative aspects of care facilities, overseeing both medical care and staff. They are the highest level of management in the facility. Serious issues should be brought to them. They typically report to someone at the corporate headquarters.
- **Nursing Director:** Managing the nurses and nursing supervisors, Nursing Directors ensure care standards are being met. They report directly to the Administrator and often corporate nurses.
- **Physical or Occupational Therapist:** If your loved one will require any type of therapy while staying at the facility, ask to see the therapy unit. Ideally, you want to observe the therapist and how he or she interacts with residents. Ask to speak with the therapist to learn their treatment style and get an idea of their personality.
- **Marketing Staff:** In assisted living facilities, a marketing person often provides the tour and answers your questions. If they are your initial point of contact, remember their job is to sell you on the facility; they want you to fill an open bed. It is vital that you ask tough questions and see the whole facility, even if you're paired up with a marketing employee. Don't be afraid to insist you learn what you need to in order to get a real look at the facility and how it is run.
- **Social Workers:** These staff members help with coordinating health insurance benefits, insurance claims, rehabilitation and finding extra providers such as hospice services.
- **Activities Director/Staff:** These staff members are vital to encouraging your loved one to engage in creative activities and social events on a regular basis.
- **Nursing Staff:** Good facilities have a thoroughly trained nursing staff, including registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs). If you have the opportunity to speak with the nurses and nursing assistants, do so. This can help you see the kind of people employed there, and feel comfortable leaving your loved one in their care. If you don't feel the nursing staff is compassionate and qualified, choose another facility.

WHAT TO ASK AND LOOK FOR WHEN YOU TOUR FACILITIES

SET CLEAR EXPECTATIONS

An important part of your role when touring facilities is to set clear expectations with the staff you meet. Ask them outright if they can provide the level of care your loved one needs, whether that includes help with eating, a memory care unit for a cognitive disease, assistance dressing, and so on. You need to find out if they can meet your loved one's needs. If staff members seem disinterested or annoyed by your questions, choose another facility.

MEET THE HEAD OF THE RESIDENTS' COUNCIL

Care facilities generally have a Residents' Council, to keep communication open between residents and staff, voice concerns, share news and important information about the facility and its programs, and encourage residents to engage in the resident community. The exact purpose and role of the Council is specific to each facility.

Like most groups, there is a leader, the Head of the Residents' Council. Ask to speak with this resident to get an honest opinion of the facility and to hear their experience. Meeting with them will give you an insight into daily life at the facility. You will also see how it's managed, whether staff are friendly and good at their jobs, and the quality of service and care that is provided.

Keep in mind that if the Head of the Residents' Council is high-functioning, they won't have as much personal experience with how well the staff cares for residents who need extensive care.





FIND OUT ABOUT THE RESIDENT ACTIVITIES

Care facilities are required to offer meaningful activities to residents so they are not stuck in their rooms or a hallway all day. Ask what individual and group activities are offered. If the only activities offered are TV and movies with popcorn, consider another facility. A well-run facility will offer a variety of stimulating activities like concerts and shows, Bingo, Bible studies, and resident birthday celebrations. Ask to be placed on the facility's newsletter mailing list so you can review the activities calendar for yourself.

LOOK AROUND

- When you first visit a facility, look around the property, inside and out.
- Are the grounds well-maintained?
- Are residents engaged in meaningful activities?
- Is there an outdoor area for residents to sit outside or any activities set up on the property?
- How many call lights are illuminated or bells are ringing?
- Are the floors, bathrooms and resident common rooms clean and organized?
- Are staff members assisting residents with meals?
- Are residents in their rooms, or lined up in wheelchairs in the hallways?
- Is there a smell?

WHAT TO ASK AND LOOK FOR WHEN YOU TOUR FACILITIES

Ask to walk through every hallway, not just the areas they choose to show you, as well as shower rooms and therapy areas. A fancy, clean facility does not necessarily mean they are providing good care, but you want to see that it is clean and well-maintained.

ASK TOUGH QUESTIONS

Be sure to inquire about the physician who will be caring for your loved one, including who the medical director is, how many facilities the medical director is associated with, and how many physicians have admitting privileges to the facility.

Your loved one's health and safety is going to be put into the hands of people you do not know. Doing so will be one of the most difficult things you've ever done, so make sure you're as comfortable as possible with the facility you choose.

Part of being comfortable and confident in your decision comes from asking tough questions. During your research, if you learned that the facility you are considering was cited for serious violations of the law, ask what has been done to ensure it doesn't happen again. It might feel awkward to bring it up, but a good facility has learned from its mistakes.

If staff members become argumentative or defensive, they may not have corrected their violations or simply do not care.

THE FOLLOWING ARE RED FLAGS TO WATCH FOR AT ANY FACILITY YOU VISIT:

1 RED FLAG: No Assistance During Meals

If you notice that there's only one assistant or nurse in the dining room with all residents during meal time, it could be a sign that the facility is understaffed and there won't be necessary feeding assistance. This is extremely important if you know that your loved one needs or will soon need help with daily activities, including eating.

Many abuse and neglect cases are related to lack of assistance during meals. In these cases, staff simply place meals in front of residents and leave them to try to eat by themselves. This is unacceptable for residents who need assistance, and the lack of help with meals often leads to malnutrition, dehydration or choking.



CAREGIVER TIP 4

A personal tour of the facilities is vital to make the right placement decision for your loved one. Knowing what to look for and what questions to ask during your tours will help you make the most informed decision. Don't be afraid to ask tough questions or choose another facility if you don't like what you see or hear.

2 RED FLAG: Empty Halls

A well-staffed facility will always have nurses and assistants popping in and out of rooms, continually walking up and down hallways as they monitor and help residents. If the hallways have little visible nursing staff during your tour, it may be a sign they may not have enough nurses working there.

3 RED FLAG: Limited Tours

During a tour of the facility, you should be shown all areas your loved one will be able to access. Many times the staff giving the tour will say you cannot see or look into certain rooms. They may rush the tour and not allow you to observe the way it is run. Facilities should be open and understanding for your need to see the entire facility and what life will be like for your loved one. If you are rushed or not shown certain areas, it might be cause for concern.

4 RED FLAG: Residents Lined Up in the Halls or at the Nurse's Station

Something upsetting to see, yet happens frequently, is a row of residents lined up (in wheelchairs) in the halls or in front of the nurse's station. Nurses at understaffed facilities frequently place residents in chairs near their station in order to watch them without checking each room. A good facility never does this. Nurses should be able to check on every resident in their rooms every two hours or so.

5 RED FLAG: Unanswered Call Bells and Call Lights

Call bells and call lights are present so residents can get the attention of a staff person when they need something. They may need

help or have an emergency. If call bells are constantly ringing or call lights never turn off, it's likely that the facility is understaffed. Staff should be able to respond to calls very quickly.

If you are visiting, stay for 30 minutes and get a sense for staff response. If you see unanswered calls, you may want to consider other facilities.

6 RED FLAG: Few Weekend Staff and Managers

During your weekend visit, you will see if there are differences in the staffing level compared to during the week. The same level of staff should work on the weekends, and a nurse manager working each shift. Many family and friends of residents have seen the weekend staff act inappropriately with no manager on the weekend.

7 RED FLAG: High Administration and Care Staff Turnover

A danger sign is a facility with high turnover of administrative and nursing staff. When employees constantly leave, maintaining continuity of care and staff morale is difficult. The learning curve and adjustment period for both staff and residents is always present when employees change frequently.

8 RED FLAG: Unpleasant Smells Throughout the Facility

Unpleasant smells should not discourage you from selecting a care facility, unless the smell of feces and urine is pervasive throughout the whole facility. Many residents in care facilities suffer from bowel and bladder incontinence, so it's not uncommon to smell that when you are visiting. However, if the smell is strong everywhere, it's a sign that residents aren't being changed or toileted frequently enough.

CHAPTER 5

FINANCIAL CONSIDERATIONS IN FINDING A CARE FACILITY

The most important role you have as a caregiver is to find the right facility for your loved one. The financial aspect is important and is often the most critical part of the final decision. If finances are an issue, other assistance and resources may be available to help cover the costs of care.

If you or your loved one have any level of income (even monthly income over \$5,000), there are programs that protect the healthy spouse and provide resources for getting care. These programs are through Medicaid and the Veterans Administration.

MEDICAID PROGRAMS

In Florida, Medicaid is available to help with the costs of 24-hour, long-term nursing care for Medicaid-eligible recipients.

Because some nursing homes can cost \$10,000 per month for 24-hour care, any financial assistance will help you lower the cost and stress of affording full-time care.

Seeking financial assistance helps the healthy spouse by allowing them to save money for future care for either spouse or disabled beneficiaries.

Even if your loved one is not married, Medicaid laws exist to help preserve assets for your loved one's care and maintenance.

Spending all of your loved one's money on nursing care, and then requesting Medicaid, is not prudent financial planning.

Medicaid covers room, board, and care. Medicaid does not cover the cost to maintain your loved one's home while he or she is receiving care. Having a maintained home to come back to is a big psychological motivator for someone to maybe improve and leave nursing care.



Further, Medicaid laws only allow someone to have \$2,000 in assets and \$105 a month to cover things such as:

- Food outside of nursing home food
- Beauty products, haircuts, nail care and other grooming and hygiene needs
- Co-pays and deductibles at hospitals and doctor's offices
- Care supplies such as your loved one's preferred type of incontinence supplies (the cheap ones that are sometimes provided can cause skin irritation and discomfort)
- Expensive medical supplies such as dentures, hearing aids (and batteries), glasses and bedsores preventive equipment.

If you do not take advantage of the Medicaid laws to preserve assets, then you either pay the costs out of pocket, or your loved one will not have proper care.

Medicaid is a means-based benefit, meaning assets have to be under a certain level. Your loved one cannot transfer money to you to be below the level. Florida's Department of Children and Families (DCF) can retrieve 5 years' worth of bank records to see if large withdrawals have been made from your loved one's accounts.

Your income rarely matters in order to qualify, unless it exceeds the cost of nursing care (usually \$7,500 or more). If your income is higher than the cost of the facility, you probably won't be need Medicaid assistance.

For a single person, countable assets can only be worth \$2,000 or less to be eligible for Medicaid. Assets that are not considered countable include the house of the person requiring care, retirement accounts (if set up correctly), and small life insurance and burial policies. Everything else is usually considered countable. If you exceed the countable assets, you should consult with an elder law attorney to discuss how to legally preserve assets based on state and Medicaid laws.

You cannot gift or give money away to make you eligible for Medicaid. However, there are permitted transactions under the Medicaid rules.

One such legal tool can include using a pooled special needs trust. The pooled trust is a trust fund run by various non-profit entities that specifically set up these types of trusts. The pooled trust will pay your loved one's bills and provide for his or her needs at your direction. Typically, you will notify the pooled trust about bills or services that your loved one requires, and the pooled trust will pay that provider directly. Moving assets to a pooled trust does not cause any penalties with Medicaid laws in Florida.

As with all advice relating to asset protection and Medicaid laws, there are benefits and risks for using the pooled special needs trust, versus other options. For example, once your loved one passes away, the pooled special needs trust must repay the State of Florida for services Medicaid covered. Typically, there is no money left in the pooled trust for the adult children after their loved one has passed away. The remainder, if any, will be distributed according to the terms set up with the pooled trust company selected.

FINANCIAL CONSIDERATIONS IN FINDING A CARE FACILITY

Another option to protect assets is to set up a contract for future personal caregiving services. The contract can be with a family member, and the family member can be paid a lump sum for services. If done correctly, the Medicaid rules permit this type of family transaction. The downside of a contract for personal services is it requires the recipient of the money to pay income taxes. Usually the costs of care without Medicaid assistance will exceed the amount of income tax. An elder law attorney can assist you with this is the type of complicated transaction.

Spouses are protected so that the spouse has assets and income available to maintain his or her quality of life when their loved one is in a facility receiving care. Sometimes, the spouse can keep up to \$2,900 in household income and up to \$119,000 in assets.

CAREGIVER TIP 5

Medicaid and VA benefits are often available to help offset the costs of nursing care and, in some cases, assisted living. You cannot transfer money or assets to qualify. You should consult an elder law attorney experienced in helping families qualify for these benefits to ensure your loved one gets the benefits they need.



DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs (VA) has programs to assist veterans with long-term care. Any veteran who served active duty for at least one day of war is eligible.

The VA offers Improved Pension, a needs-based benefit. Eligible veterans are those who are paying for assisted living and nursing care that exceeds their income and is causing them to take money out of their assets.

In general, assets not including the house, items in the house, and car must be less than \$30,000 for a single person or \$50,000 for a couple. Widows of veterans who did not remarry or divorce can receive this benefit as well, up to \$2,100 per month, tax-free.

An elder law attorney can help you qualify for VA Improved Pension if your loved one exceeds income or asset limits.

Through the social workers at VA hospitals, your loved one may also receive adult day care benefits. Veterans can also receive daily care and transportation to and from this day care. Those with service-connected disability ratings above 70 can receive additional rehabilitation days above and beyond what Medicare covers, as well.

CHAPTER 6

THE ADMISSIONS PROCESS

Whether your loved one requires short-term care, partial care and assistance, or long-term, full-time care, each facility has an admissions process that residents must follow.

ADMISSIONS ASSESSMENT

Before a care facility admits a resident, the resident is assessed to determine the level of care they need. The assessment is commonly referred to as the “red, yellow, green light system.” Most facilities have a checklist that covers all aspects of care, including medications, existing chronic

health conditions, why they were admitted to the hospital, and the needs recommended by a hospital doctor. This checklist is sent to and reviewed by a higher level manager or someone in the facility’s corporate structure to determine if they can meet the resident’s needs.

Nursing homes usually have admissions representatives at the hospital. When someone is being discharged from the hospital into a care facility, the assessment may be completed at the hospital.

Most facilities accept residents who have chronic illnesses or have undergone surgeries that require rehabilitation, like hip replacement. For more specialized care, such as the use of a ventilator, the options are much more limited.

If a facility denies an admission because the assessment showed they can’t meet the needs of the resident, there is no way to appeal the decision. That said, the resident would not want to appeal since the facility cannot provide the care and assistance needed.

The family can inquire again later if a choice facility denies admission. Perhaps the loved one’s condition changes to meet that facility’s admission and care requirements. The determination is made based on the care needs at the time of the assessment.



THE ADMISSIONS PROCESS



WAITING LISTS

The best facilities often will not have beds at the time you request your loved one to be admitted. If this happens, you should get your loved one on the waiting list. SNFs often do not take a Medicaid patient who is not first a Medicare patient. When you tour a facility, be sure to ask the number of licensed beds and what the daily census is. SNFs are required to post both staffing and census information by shift in a public place. Beds frequently become available within days of being on the waiting list, and your loved one can transfer to the preferred facility at that time. Be ready to make a quick decision, though. Facilities will typically require an answer about the transfer that day. Be wise in your decision-making, as residents cannot transfer from a second choice SNF to their first choice SNF AND retain Medicare payment for care.

FACILITY CONTRACT

Residents of care facilities are legally required to have a written contract with the facility at the time they are admitted. The contract outlines the resident's rights, cost and other information about the facility.

If you do not understand the agreement, review it first with an elder law attorney or someone in your family who does understand it. You should understand every part of the contract you sign, because contracts are legally binding. Arbitration agreements are also usually part of the contract, which is not something we recommend you sign. In most cases, you can refuse to sign the arbitration agreement and your loved one can still be admitted.

As a caregiver, you should refuse to sign anything that would make you personally liable for your loved one's bills if your loved one does not have the ability to pay. If you have a durable power of attorney, make sure you note that you are acting as agent under that durable power of attorney. You can do this by signing documents as follows: "[Loved one's name] by [caregiver's name], his/her Agent."

ARBITRATION AGREEMENTS

Simply put, arbitration agreements prevent you from filing a lawsuit in court if your loved one is abused or neglected at the facility. Arbitration is a dispute resolution process outside of the court system. It greatly limits the possible award recovery, and at a much larger cost to you.

Arbitration agreements are usually presented by someone from the facility who may claim it's a faster, cheaper and easier process for filing cases against the facility. This is far from the truth. These agreements cost you more money than court because you have to split the cost of the process. With three lawyers working as arbitrators and a couple weeks' worth of work, the total cost could easily be \$80,000 – and you would be responsible to pay half of this!

From an attorney's perspective, it is not recommended that caregivers sign arbitration agreements. Do not allow facility staff to pressure or threaten you into signing arbitration agreements. The facility cannot force you to sign and they cannot legally deny your resident request if you do not sign. Simply cross off with a blue pen the part of the contract that includes the arbitration agreement and write "Rejected".

INITIAL AND FORMAL PLAN OF CARE

The law requires an initial plan of care be written for each resident in a SNF.

The SNF will prepare an initial care plan (based on the nursing assessment the day of admission), complete a comprehensive assessment by the interdisciplinary team within the first 14 days post admission, and then generate the care plan from the comprehensive assessment process. Additionally, the doctor will assess your loved one before the formal care plan is completed. Both the resident, if he or she is competent, and the family should be interviewed by the SNF staff, who will then assemble a care plan which becomes the blueprint for the care and services to be provided.

Ask to be informed of the date and time of the care plan meeting. Attend the meeting, obtain a copy of the formal care plan, and request that you be invited to any future care plan meetings. Facilities are required by law to invite the appropriate people – the person with durable power of attorney and certain loved ones.

If you are not involved in these meetings, mistakes may happen. For example, the care plan might include a medical condition your loved one does not have because the records were read incorrectly. As the caregiver, you know what type of care your loved one needs, their medical history and current medical conditions. Being present will keep you informed and prevent mistakes from happening.

THE ADMISSIONS PROCESS

GETTING THE ABILITY TO TAKE ACTION

As the primary caregiver, you need to have the legal ability to take action. Create and sign the proper documents to avoid issues with making decisions later. These documents include a durable power of attorney, healthcare surrogate, HIPAA authorization and a living will. To get everything in order, you should have the following created and signed:

- **Durable Power of Attorney:** This gives you the ability to handle all of your loved one's financial needs and issues, such as working with banks, Social Security, other income sources, retirement plans, etc. Have an elder law attorney who is actively practicing Medicaid planning draft the durable power of attorney because Florida law, Medicaid law and banks are strict on what needs to be included. Do not use internet forms or go to your "family" attorney. If certain provisions in a durable power of attorney are missing, you could easily face a \$10,000 solution to fix a poorly drafted durable power of attorney.

Any financial-related signatures must indicate that you are acting as the power of attorney (POA).

- **Health Insurance Portability and Accountability Act:** HIPAA is the federal medical privacy law. HIPAA restricts healthcare providers from talking to anyone about your loved one's care unless they receive written authorization to do so.

- **Healthcare Surrogate:** In Florida, a medical power of attorney legal instrument is known as a healthcare surrogate. Once this person is designated, they have the ability to make medical decisions on behalf of the loved one. They are usually helped and supported by a HIPAA-compliant authorization. The healthcare surrogate needs to be on the HIPAA authorization list. This allows medical providers and insurance providers to talk with you about your loved one's medical care.
- **Living Will:** Your loved one can create a living will that designates the medical care they want or do not want if they become unable to make these decisions in the future. It is a written statement that healthcare providers must follow. Your loved one is telling their healthcare surrogate whether they want life-prolonging procedures, if there is no medical possibility of recovery.

Of course, if you already have these documents, they're up to date and reflective of the loved one's wants and needs, you can leave them as is. You may also want to provide written signed instructions on whom you would like and allow the facility to share medical information with. If a family member or friend is not so designated, HIPAA will prevent the facility from informing anyone about the resident's medical information and needs.



CAREGIVER TIP 6

Ensure the care facility can provide your loved one with the level of care he or she needs before being admitted. Once admitted, make sure that your loved one's care plan is specifically tailored to their needs.

Carefully read the Admission paperwork. Cross out any arbitration agreement with a blue pen and write "rejected."

By having medical and financial paperwork in place that is properly drafted, you will be in a position to make important decisions without delay or legal problems.



CHAPTER 7

SPECIAL ISSUES WITH THE ASSOCIATED COSTS OF CARE

In Chapter 2, we compared the average monthly cost in Florida for independent living facilities (\$2,000), assisted living facilities (\$4,500), and nursing homes (\$8,000). We also compared the level of care provided at each facility.

For many, these amounts can seem unaffordable. Do not let that deter you, since you may have programs available to help pay for your loved one's stay in a care facility. Depending on the length of stay and coverage available, you may even pay nothing.

Medicare and Medicaid are often confused, so the differences are explained below.

MEDICARE COVERAGE IN A NURSING HOME

Medicare only pays for care facilities when rehabilitation services are needed. The patient must be admitted to a hospital for three days, and then be discharged to a care facility for rehabilitation. Medicare will cover the full cost of the first 20 days of rehab if specific requirements are met. If your loved one is at the hospital for observation but is not admitted, they will not be able to receive Medicare benefits when they leave the hospital.

Days 21 through 100 at the care facility are partially paid by Medicare. The rest of the cost could be paid by your Medicare supplement or other healthcare coverage program. Some programs, such as TRICARE, can extend payment past the first 100 days at a care facility.

When considering possible facilities, look for those that accept your supplemental care program if the stay is longer than 20 days. If the facility doesn't accept it, you could end up paying for days 21 to 100. Alternatively, you could get Medicaid to cover that shortfall.

Finally, be careful when selecting between Medicare advantage plans and supplements. Your preferred care locations may not accept your Medicare coverage for rehab services, or you might have a gap in coverage for days 21 to 100. This point re-emphasizes the need to be proactive in your search for the right care facility.

MEDICAID COVERAGE

Medicaid is a government program that provides assistance by paying for certain nursing home care, as well as assisted living facilities in limited circumstances.

To receive Medicaid coverage, the State of Florida requires financial documents and information, including proof of income and assets, bank and insurance statements, property records, and investment statements. The State will not take your word for it; you need to provide proof that you did not give away your money, and that your loved one's assets are under the qualification limits.

There's a misconception among many caregivers that their loved one will receive less quality care and service depending on how they're paying the



facility. This is not true. In fact, federal law prevents nursing homes from discriminating against their residents based on payment source.

Medicaid qualification requirements, and the reasons for seeking qualification before money runs out, are discussed in greater detail in chapter 5.

FINANCIAL AND INSURANCE REQUESTS FROM NURSING HOME STAFF

It's common for the care facility to ask for financial documents to file for Medicaid. Manage your money the right way – don't give money to yourself from your loved one's account – to avoid red flags about money transfers or other financial moves that disqualify you from the program.

You might also be asked for Social Security payments to be paid directly to the care facility. It's not recommended that you provide this information.

The nursing homes request it because, when you receive Medicaid to help pay for care, you pay most of your income to the nursing home. Other than a small amount of income kept for personal needs (currently \$105 per month of your loved one's income) and to cover the cost of Medicare supplement or health insurance, the facility receives what monthly income remains.

Since the facility gets most of your income, they want the Social Security payments to be sent right to them. You do not have to do this, and it can make more work for you in the future if you permit this practice. For example, if your loved one has to go back into the hospital or if he or she moves to a different nursing home, the facility receiving your payments directly will owe you money. This creates a burden for you to sort out, so keep Social Security payments coming directly to you.



SPECIAL ISSUES WITH THE ASSOCIATED COSTS OF CARE

COMPARE THE RISKS AND DIFFERENCES IN COSTS BETWEEN FACILITIES AND IN-HOME WORKERS

In-home caregiver companies typically charge around \$20 per hour. It adds up to around \$13,000 per month for 24/7 in-home care.

A professional business offering this service should provide extensive training, as well as liability insurance, for their caregivers. If you plan to hire a caregiver through a company or even through someone you know, ask what training the caregiver has had and if the appropriate insurance is in place. Also, check online if they have a valid license or certificate at <http://www.flhealthsource.gov>. While you might not personally know the worker from a caregiver company, their training may help you feel much more comfortable about them.

Many people will instead ask around or search online for independent caregivers, who may charge between \$10 and \$14 per hour.

Cheaper is not necessarily better, especially when it comes to caring for a loved one. It might be \$10 less per hour to hire someone you find online, but the services, protection, level of education and training would be lower compared to what you get from a professional company. You also do not have insurance (protection) if something bad happens.

As a word of warning, some independent caregivers ask to be paid “under the table.” When that person applies for a loan or Social Security, they may trigger an IRS audit of your loved one for unreported payroll taxes owed.

Remember, you have to put your trust and the safety of your loved one in the hands of someone you do not know. Do the most you can to protect your loved one.

CAREGIVER TIP 7

Be proactive when choosing a Medicare supplement or advantage plan. Be familiar with what facilities and amounts your plan will cover. Nursing homes cannot provide lesser care because Medicaid is paying the bill. Nursing homes will ask for your loved one's financial information if Medicaid seems to be a likely payer.

Professional in-home care is an alternative option to a care facility. However, the high cost of professional in-home care may make nursing home or assisted care a preferred option.



CHAPTER 8

RESIDENT RIGHTS WHILE LIVING IN A FACILITY

Care facilities become your loved one's home. Every resident has rights that protect them from improper treatment and help ensure they receive the services they need.

The facility also has procedures and guidelines to reduce the chance of something going wrong. This chapter reviews the residents' rights, as well as your role as a caregiver and recognizing when something is wrong.

LEVEL OF CARE

Although your loved one is paying a lot for care, that does not guarantee they will always receive the level of care they need. As a spouse, friend, parent, sibling or child, you should visit your loved one daily to observe how the facility is running and the care they're providing. You need to hold the staff and administrators accountable.

RESIDENT RIGHTS

All residents of assisted living facilities and nursing homes are protected under a Resident's "Bill of Rights." These include the right to dignity and respect, to be free of abuse and neglect, to receive the proper type and dosage of medications, and to access existing doctors.

KEEPING VALUABLES SAFE

Bringing jewelry and other valuables into a care facility is not advisable because they may be stolen. Many valuables must come in with your loved one, such as hearing aids, dentures and glasses. Medical and care

items can be very expensive, upwards of \$5,000. Whether another resident takes them or they're accidentally thrown out, replacing them can be a hassle and may cost you money.

Be very careful with these items. Make staff aware of the existence and cost of these valuables. If your loved one has memory care needs, be extra careful.

Because the facility is not responsible for loss or theft, document your loved one's medical valuables. Indicate, in a detailed letter to the administrator, that these are not to leave their possession. If these items go "missing," there is a greater likelihood the facility will pay to replace them.

DOCUMENT YOUR OBSERVATIONS

While your role as caregiver is no longer focused on providing direct care, you should still be observing, making sure your loved one is being treated properly and getting the care they need. You and your family members should keep a journal of key observations and conversations with the care facility from day one. Make notes for each day you visit, including conversations with doctors and staff, and any questionable situations that occur.

These journals can be valuable in the future if something goes wrong. Because memories fade quickly, these journals will help refresh your recollection of what led up to a certain issue. If something is going wrong, it will be up to you to contact the right people, address the problem, and

RESIDENT RIGHTS WHILE LIVING IN A FACILITY

prevent it from happening again. See the next chapter for more about taking action when something is wrong.

Even if something does not go wrong with your loved one's care, the experience of being a caregiver for an elderly person is completely new to most people. You will have a lot of information coming at you all at once. A journal of your observations and conversations can help you stay on top of things and feel confident as a caregiver.

Finally, a journal is an excellent defense against claims of abuse or neglect against you! Sometimes, an out-of-town sibling or relative is unaware of what you are going through. This person could make abuse claims or estate challenges based on ignorance of the caregiving needs of your loved one.

CAREGIVER TIP 8

Your loved one has important legal rights as a resident of a care facility.

Keep a detailed journal of all your daily observations and conversations. This journal can be used as evidence if issues arise later.



CHAPTER 9

SIGNS THAT SOMETHING IS WRONG



As a family member or friend of someone in a care facility, you should pay attention to the day-to-day care the facility provides and know the warning signs that something may be wrong. Since you have either cared for your loved one or been around them frequently, you are in the best position to notice warning signs.

There are different warning signs. Some are obvious, others are not. Knowing what to look for can help identify and solve problems before they become serious. In situations where your loved one is injured from

abuse or neglect, what you observe and document is critical in holding the right people responsible.

CHANGES IN CONDITION

The biggest warning sign is when you observe a noticeable change in your loved one's mental or physical condition. Look for sudden changes that seem to come out of nowhere. Some common changes include pain that was not there before, lack of communication when your loved one is usually talkative, or being "out of it." Any of these or other unexplained changes in their condition can be a sign that something is wrong.

While abuse and neglect can sometimes be hidden, physical changes like bruises, cuts or even fractures are all warning signs.

PRESSURE SORES (A/K/A BEDSORES)

Pressure sores are ulcers that develop when people are unable to move on their own and spend most of their time in a bed or wheelchair. Sores are almost always preventable. Nurses and other care staff should know and use techniques on residents at risk. Because of the condition and situation your loved one is in, the facility staff may know they will have a hard time preventing the pressure sores. They should tell you this in advance and take proactive measures.

Pressure ulcers can worsen very quickly and cause serious problems. If

you notice a pressure sore – even in stage 1, where the skin becomes red – tell the charge nurse and the Director of Nursing immediately. A stage 4 pressure ulcer, the worst stage, is extremely painful and can take more than a year to heal. The goal is to avoid any type of pressure-related skin breakdown.

MALNUTRITION

Residents who require help with eating can suffer from malnutrition if they do not get the assistance they need. In other cases, residents who can feed themselves do not eat because they do not like the food. You might see a change in behavior or appearance from the little to no food they're eating.

If you suspect your loved one is malnourished, ask the charge nurse and treating physician to run albumin and pre-albumin tests. These tests measure protein levels, and will confirm whether the resident is malnourished.

Low albumin levels should trigger a care plan conference with the facility's registered dietician, administrator, doctor and director of nursing. They will create a care plan to address the malnutrition. This includes providing food that the resident will eat if the resident does not like the food served.

Something to consider is whether or not the change you see from malnourishment is because of the loved one choosing not to eat, being unable to eat and not getting help, or being in the process of dying. When your loved one is dying and the facility has done all it can to help and encourage them to eat, the facility is not at fault for the malnourishment.

DEHYDRATION

Dehydration should also be reported to the charge nurse and Director of Nursing. Facilities have many ways to prevent dehydration. The care plan

should reflect how they will remedy the situation. In severe cases, the resident should be sent to the hospital for IV therapy.

WHAT TO DO IF SOMETHING IS WRONG

If you see warning signs, take immediate action. Contact the nursing supervisor and ask for someone to assess your loved one right away. Ask what happened. Do not accept the staff's attempt to downplay the situation. If that happens, or if they are not doing what you have asked, report to someone who has more authority.

In the event of serious issues, if no one will look at your loved one or there is no doctor available, consider having your loved one taken to the emergency room.

Do not be afraid to demand your loved one be taken to the emergency room for serious issues. If the staff refuses to transport your loved one to the emergency room, call 9-1-1 and have police and rescue transport them.



SIGNS THAT SOMETHING IS WRONG

SEPSIS

Sepsis is blood poisoning, usually caused by some type of bacteria. It's commonly seen when bacteria gets into pressure ulcers and infects the system. Another common scenario is with a urinary tract infection.

Sepsis usually manifests itself by a high fever. For the elderly, a high fever can be as low as 100 degrees. They may show signs of lethargy and delusion, and an inability to communicate well. These are general signs of septic shock and they require immediate attention. If the facility does not address the symptoms, demand your loved one be taken to the hospital, or call 9-1-1 and have police and rescue transport them.

SIGNS AND SYMPTOMS OF PRESSURE SORES

The first sign of a pressure sore is when your loved one complains of pain on their backside or heels. Those are the primary areas for pressure ulcers to develop. When someone lies in bed for long periods of time, the pressure will be greatest on those areas of the body.

Inspect your loved one's skin in those areas at least three times per week if they're lying in bed or sitting in a wheelchair for long amounts of time. Look for redness, a sign that the skin is breaking down. This can eventually lead to significant pressure sores.

As pressure ulcers move into more serious stages, the ulcers get to the worst point – they deepen all the way through the tissue to the bone. This can happen quickly, sometimes within days of the first sign. That is why regular skin inspections are important, and involving the nursing staff immediately upon signs of trouble.



CAREGIVER TIP 9

There are certain warning signs that something is wrong with your loved one. The obvious ones include a noticeable change in your loved one's condition. Others are not so obvious.

Be vigilant and immediately report any warning signs to the nursing staff. Demand your loved one be taken to the emergency room if the issue is serious and staff is non-responsive.

CHAPTER 10

HOW TO INITIATE A COMPLAINT ABOUT YOUR LOVED ONE'S CARE

Every facility has its share of problems, even the best ones in your area.

If you see or suspect your loved one has suffered abuse, neglect or any improper treatment in the care facility, you should take steps to hold those involved accountable for their actions.

Determine the Nature of the Complaint

Identifying whether the complaint is minor or serious is the first step.



MINOR ISSUES

Minor complaints could include things like the room being too hot or cold, or the food being cold when it should be hot. Issues that are easily fixed can be brought directly to the staff person responsible for that area of care. If you're not sure, ask a staff member to help you find the right person.

Once you voice your complaint, the facility should correct it. If it happens again, be direct and tell them it needs to be fixed. You do not usually have to go to a higher level of management for minor complaints. While an issue may be minor if it only happens once, it can become serious if it happens regularly.

SERIOUS ISSUES

Serious complaints are those that violate the resident's rights or put their health or life in danger. Not getting help with meals could cause them to suffer from malnutrition and dehydration. When a serious issue arises, such as when a facility fails to assist your loved one with eating, it should be reported in writing to the nursing supervisor. After this, it may not happen again. It's your loved one's right as a resident to receive the care they need.

Other serious complaints include residents lying in their own urine or feces for long periods of time, and lack of treatment for skin breakdown or bed sores.

HOW TO INITIATE A COMPLAINT ABOUT YOUR LOVED ONE'S CARE

It's also important to note that, although certified nursing assistants provide most of the daily direct care for your loved one, complaints made to them will most likely go no further. They probably won't tell the Director of Nursing. You need to talk to someone higher up the chain of command. Start with the nursing supervisor and work your way up to the Director of Nursing, and then meet the Administrator for serious complaints.

FORMAL COMPLAINTS

Minor complaints can be addressed as they happen and, if they are resolved, there's no need for further action. Some of the large nursing home chains have care lines that are ideal for small or minor complaints. This is usually a 1-800 number posted in the facility. We recommend you report complaints to this hotline, because it's confidential. Corporate facilities are usually good at investigating and finding a solution quickly.

For serious issues, you need to complain in writing. Your complaint should include details about the issue, the date or dates it happened, if you complained, and the name of the staff person you complained to. Sign and date the complaint, keep a copy for yourself, and give copies to both the Director of Nursing and Administrator. Written complaints may help your case if it requires legal action. In many cases that go to court, the facility staff deny receiving any complaints from the caregiver or family.

It's also a good idea to request an in-person conference with the Administrator, Director of Nursing, other department leaders and the doctor. Always bring an additional person who can serve as a witness to conferences

regarding a complaint. These conferences often resolve the issue, and the facility will create a plan for preventing it from happening again. If the conference and letter of complaint do not solve the problem, you should call the Florida Elder Abuse Hotline.

ELDER ABUSE HOTLINE

Complaints of serious mistreatment, abuse and neglect should be reported to the Florida Elder Abuse Hotline at 1-800-96-ABUSE (1-800-962-2873). While the hotline is confidential, it is usually obvious to the facility who complained--especially if you are the only person visiting your loved one.

Once you reach the point of having to contact the Abuse Hotline or another agency, you want to have an exit plan in place. We recommend moving your loved one to a different facility once you make the complaint.

TAKE PICTURES

It's highly recommended that you take photographic evidence of unexplained bruises, pressure sores, and your loved one left sitting in feces and urine. Include a measuring tape in the photograph to show the size of the injury, where appropriate. Photographing any and all changes in conditions may be helpful in the future. Remember, most cell phones are equipped with good quality digital cameras that can be used for this purpose.

Be aware that many SNFs, and some ALFs, have adopted formal policies against the use of cameras and technology for recording a resident's condition. Be cautious; if you are caught violating the policy, the resident

may be discharged from the facility. You may have to take the resident to a doctor's appointment or out of the facility for lunch or a family visit to take the photos.

COMMON COMPLAINTS

One of the most common complaints is the length of time a resident's call bell or call light was on before staff addressed what was needed. There is no set time that is considered reasonable, because it depends on why someone needs help or assistance.

When a resident uses the call bell or light, the staff should acknowledge the call right away and find out what is needed. At that point, staff should decide how important the need or request is, then deal with each call from the most important to the least important. A change in the room temperature is less important than a resident lying in their own feces or urine, or someone having chest pains. It should not take an hour to change the temperature in a room, but it might be reasonable to wait 15 minutes if the nurses are busy with more serious situations.

RECORDING THE FACILITY

You may be tempted to use a camera or smartphone to record your loved one's stay in a facility. However, it is illegal to record people without their permission, and specifically to audio record them. If at your care plan meeting you ask to record the staff and one person declines, you cannot record the meeting. All of them must agree to be recorded in order to make audio recordings.

If you suspect the facility is abusing or neglecting your loved one and they do not have a policy that prohibits video recording, you could use a hidden camera to see if your suspicions are right. You may use a hidden camera, as long as it does not record audio, and no other residents are recorded. However, you cannot do this if the facility has a policy against the use of hidden cameras. Doing so when you're not allowed could cause your loved one to be discharged from the facility.

WHEN TO INVOLVE AN ATTORNEY

Attorneys generally do not get involved with minor complaints. Including an attorney could make the situation worse. The right time to involve an attorney is when your loved one has been injured as a result of abuse or neglect, or if they die and you suspect the facility's care contributed to their death.

CAREGIVER TIP 10

Report minor and serious care issues. Serious issues should be put in writing and reported to the proper person. Request an in-person conference to discuss and resolve serious care issues. Photograph your loved one if you suspect abuse or neglect. Contact an attorney if your loved one has been injured or dies as a result of care at the facility.



CHAPTER 11

THE LEGAL PROCESS WHEN SOMETHING GOES WRONG

Previous chapters have outlined everything from searching for a facility, to touring and researching, costs, admission process, and level of care, to identifying warning signs and red flags, and what to do when something is wrong. The next step is to understand the legal process.

Hopefully you will never have to take legal action, but abuse and neglect in the care facility setting happens, even at the best facilities. You will need to know how to find the right attorney. This chapter provides a summary of the legal process, to help you move forward on behalf of a loved one.

FINDING THE RIGHT ATTORNEY

For a nursing home abuse and neglect case, it's important to find the right attorney, not just any personal injury attorney. You will need an experienced attorney who specializes in nursing home abuse and neglect cases. The average personal injury attorney will not have the knowledge or experience in dealing with this area of the law.

The right attorney is someone you like and trust. Personally interview all attorneys you are considering hiring to make sure you are comfortable with them. Ask the lawyer how many nursing home cases they have handled, and if they have the time available to handle your case.

The right attorney will be interested in your case and show a high level of compassion and understanding about the impact of the neglect or abuse on your loved one. The lawyer should commit to you that he or she will put in the work and resources required to get the best outcome possible. Avoid law firms where you only meet investigators, paralegals, or case managers.

WHAT TO BRING TO THE ATTORNEY MEETING

If you kept a diary or journal similar to what we recommended in the previous chapter, it will be helpful for explaining the case, and may even be used in your case. At the first meeting with the attorney, you'll need to provide several pieces of information:

- Details of the events that led you to seek an attorney, including dates and names of everyone involved.
- The signed admissions contract and all other admissions paperwork, including any arbitration agreement, brochures and advertisements for the facility.
- Explanation of benefits letters from Medicare to see who has been paid and what care has been given. Bring your loved one's Medicare card, Medicaid card, driver's license, Veterans Affairs card, and any other card or document. This will allow your attorney to obtain information from the government about your loved one.

- All documents related to your authority over your loved one, including the power of attorney, guardianship, living will and similar documents.
- Photographs of any injuries.
- A list of the physical and emotional effects on your loved one, including any injuries and changes in condition.
- A list of complaints, both formal and informal, that you made. You should have copies of any written complaints.

Any other details and documents you can provide, give them to your attorney. These will help them understand the full scope of the situation and case. Your attorney will let you know if you need to provide additional information.

TYPES OF CASES

The cases that nursing home abuse and neglect attorneys usually handle are those where abuse or neglect are clear. Examples include pressure ulcers, malnutrition and dehydration. Another example is fractures from falls, when a resident is a known fall risk and no measures are taken by the facility to prevent the falls. Such cases have a clear chain of events that arose from the abuse and neglect.

Attorneys will not typically take on cases when your loved one was in hospice care or was in the process of dying when the abuse or neglect occurred. While abuse and neglect of someone who is dying is wrong and should never happen, lawyers will not typically take these on because damages are limited.

Attorneys typically will not accept cases where the family members of the loved one are fighting about money, do not get along, or may have taken assets without permission. The defense can exploit these issues, making the family and case look bad.



THE LEGAL PROCESS WHEN SOMETHING GOES WRONG

ARBITRATION VERSUS GOING TO COURT

Unfortunately, many caregivers sign arbitration agreements on behalf of their loved ones that prevent them from being able to take a neglect or abuse case to court. (Refer to Chapter 6 for further explanation of these agreements). If you signed such an agreement and you end up having to go to arbitration to settle the dispute, the damages you can recover are typically limited compared to court cases. However, if handled properly, arbitration can lead to a fair result.

When you first see an attorney about your case, they can explain whether you can avoid arbitration and, if not, how to proceed to maximize the recovery.



THE LEGAL PROCESS WHEN SOMETHING GOES WRONG

FAQS ABOUT HIRING AN ATTORNEY

As a family member, you will have a wide range of questions related to abuse and neglect cases in care facilities. You may have concerns and want to understand the role of a lawyer, what the costs will be, what to expect, how long cases take, and so on. Below is a list of frequently asked questions to provide you further understanding of the legal process and what to expect.

1 When I find the right attorney, are the attorney's fees contingent upon the recovery in the case? If yes, what is a common percentage?

Yes, most lawyers follow the Florida Bar guidelines for contingent fee agreements, which is 33⅓% of the gross recovery prior to a lawsuit being filed.

If a lawsuit is filed and the defendant denies liability, the fee increases to 40%. If the defendant admits liability and requests a trial only on damages, the fee remains 33⅓%. These percentages remain until the first million dollars, and then lower from that point on. Depending on the complexity of the case and expected costs, the fee may be a flat percentage of the total recovery or a decreasing percentage of the total recovery.

2 What kind of additional expenses should I expect? Does going to trial cost more?

There are costs additional to attorney's fees for time spent pursuing the case. This can include obtaining medical records, hiring medical experts, filing fees, deposition fees, and other costs. These costs could range anywhere from \$5,000 to \$150,000, depending on the facts of the case and how far it proceeds before resolution.

Discuss attorney's fees and costs up front with your lawyer to avoid misunderstandings. These types of cases are expensive. Attorneys usually have to spend many thousands of dollars, if not hundreds of thousands of dollars, to properly pursue the case and get the best recovery.

3 Will there be a contract outlining the fees and costs?

Yes. Under the Florida Bar rules, lawyers are required to have a written contract with you that explains the attorney's fees and costs to be charged. Both you and the lawyer have to sign the contract and you will get a copy of it. Ask any questions you have about attorney's fees and the costs associated with the case, so you are fully aware of what to expect.

THE LEGAL PROCESS WHEN SOMETHING GOES WRONG

4 Can any type of attorney handle my case?

While many law firms advertise their ability to handle almost every type of personal injury case, there are actually only a few firms in any geographical location that regularly handle nursing home abuse and neglect cases. The best attorney is someone who has extensive experience in nursing home abuse and neglect cases similar to yours.

Another important question to ask any potential attorney is whether their firm has the financial resources to handle your case. If they don't have the resources, their priority will be to settle your case quickly, instead of focusing on getting the best result.

You also want to ask the attorney if they have the time to take on your case. Many good lawyers who have the financial resources may not have the time available. They may be able to take the case in a year or two, which is not ideal.

For more information on how to find the right attorney and what you need to provide, see the beginning of this chapter.

5 If I hired a nursing home abuse and neglect attorney, what kind of contact should I expect with the attorney, versus dealing with a paralegal?

Lawyers are generally busy, but you should contact them if you have questions. They should be able to answer you within a day or two. Most lawyers are best reached by email, but you can call and leave messages at their office.

Paralegals typically handle scheduling and other administrative tasks that do not require attorney involvement.

6 How long will it take my case to settle, go to trial, or get resolved?

Nursing home abuse and neglect cases take much longer than most cases – anywhere from one to four years to be resolved. It takes months to obtain the necessary records. After receipt, a nursing or physician expert reviews the records to evaluate the case for merit.

When the case is found to have merit, the lawyer is required under Florida law to give a 75-day pre-suit notice. Within this time, discovery is exchanged, unsworn statements are given, and a pre-suit mediation occurs. Since lawyers on both sides are busy, this time can easily be extended to 120 days or more.

This is why the investigation and pre-suit process can take more than a year. After a lawsuit is filed, in most parts of the state, it can take one year or longer to get a trial date for your case. Typically, defendants will ask for, and be given, continuances of the original trial date, which delays resolution even more. No matter how long the process takes, your case will eventually resolve. Many times, the wait is worth it. You have to be patient and let the legal system work.

CONCLUSION

Choosing the right facility to take care of your loved one is one of the most important decisions you will make. By following the information contained in this guide, you will be able to make the best, most fully informed decision about placement of your loved one. Also, you will have the necessary tools to ensure your loved one gets the best possible care. You will know what to do if care issues arise.

We hope this guide has been a valuable resource. Share it with others who are embarking on the challenging task of selecting a care facility. If you have questions, feel free to e-mail us at:



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