



Nursing Homes: Placement and Resident Rights

Locate a good facility and preserve a loved one's dignity



Nursing Homes: Placement and Resident Rights

Locate a good facility
and preserve a loved one's dignity

Copyright 2017 ElderLaw Answers

The information in this guide should not be considered legal advice. While we strive to provide as detailed, reliable and understandable legal information as possible in our Elder Law Guides, they cannot substitute for an attorney applying the law and years of experience to a particular client situation. We urge readers to use the Guides as background material and to consult with one of our members before taking action.

While no one ever wants to move to a nursing home, a lot of people end up there anyway. There are 15,600 nursing homes in the United States caring for approximately 1.4 million residents. Of these residents, 85 percent are over age 65 and 42 percent are over age 85. By definition, they are little able to care for themselves and need all the protection provided them under law and by families and friends.

Choosing and evaluating a nursing home

Can there be a more difficult job than finding a nursing home for a parent or spouse? They serve as institutions of last resort when it's impossible to provide the necessary care in any other setting. And, typically, the search takes place under the gun – when a hospital or

rehabilitation center is threatening discharge or it's no longer possible for the loved one to live at home. Finally, in most cases, finding the right nursing home is a once-in-a-lifetime task, one you're taking on without the experience of having done it before.

No single factor is more important to the quality of life of a nursing home resident than visits by family members.

That said, there are a few rules of thumb that can help you:

- 1. Location, location, location.** No single factor is more important to quality of care and quality of life of a nursing home resident than visits by family members. Care is often better if the facility knows someone's watching and cares. Visits can be the high point of the day or week for the nursing home resident. So, make it as easy as possible for family members and friends to visit.
- 2. Get references.** Ask the facility to provide the names of family members of residents so you can ask them about the care provided in the facility and the staff's responsiveness when the resident or relatives raise concerns.

3. Check certifying agency reports. Is the facility certified by Medicare and Medicaid? How long has the facility been certified? Free nursing home performance comparisons are available online from Medicare (visit [medicare.gov/NHCompare/home.asp](https://www.medicare.gov/NHCompare/home.asp)). To help consumers compare nursing homes more easily and identify areas about which to ask questions, Medicare has created a Five-Star Quality Rating System. The ratings are based on a facility's performance in three areas: quality measures, nurse staffing levels and health inspection reports. Medicare's Website explains the strengths and limitations of the rating system.

4. Talk to the nursing home administrator or nursing staff about how care plans are developed for residents and how they respond to concerns expressed by family members. Individual care plans must be implemented for each resident. How often is the care plan reviewed and changed? What is the protocol for handling problems? A resident of a nursing home must be under the care of a licensed physician. The physician must evaluate the resident's needs and prescribe a program of medical care, including therapy, diet restrictions, and medication. Make sure you are comfortable with the response. It is better that you meet with and ask questions of the people responsible for care, not just the person marketing the facility.

5. Tour the nursing home. Try not to be impressed by a fancy lobby or depressed by an older, more rundown facility. What matters most is the quality of care and the interactions between staff and residents. See what you pick up about how well residents are attended to and whether they are treated with respect. Also, investigate the quality of the food service. Eating is both a necessity and a pleasure that continues even when we're unable to enjoy much else.

For a checklist of factors to consider when selecting a nursing home, see the [Factors to Consider in Selecting a Nursing Home](#) section on ElderLawAnswers.com.

Talking with family about placement

The difficulty of deciding on a nursing home can be compounded when family members disagree on whether the step is necessary. This is true whether the person disagreeing is the person who needs help, his or her spouse, or a child.

We recommend the following steps to make the process less difficult:

1. Include all family members in the decision. Let them know what is happening to the person who needs care and what providing that care involves. If possible, have family meetings, whether with the family alone or with medical and social work staff, where available. If you cannot meet together, or in between meetings, use the telephone, the mail or e-mail.

2. Research other options. Find out what care can be provided at home, what kind of day care options are available outside of the home, and whether local agencies provide respite care to give the family care providers a much-needed rest. Also, look into other residential care options, such as assisted living and board and care homes. Local agencies, geriatric care managers, and elder law attorneys can help answer these questions.

3. Follow the steps above for finding the best nursing home placement available. If you and other family members know you've done your homework, the guilt factor can be assuaged (at least to some extent).

4. Where necessary, hire a geriatric care manager to help. While hospitals and public agencies have social workers to help out, they are often stretched too thin to provide the level of assistance you need. In addition, they can have dual loyalties – to the hospital that wants a patient moved as well as to the patient. A social worker or nurse working as a private geriatric care manager can assist in finding a nursing home, investigating alternatives either at home or in another residential facility, in evaluating the senior to determine the necessary

level of care, and in communicating with family members to facilitate the decision.

Resident Rights

While residents in nursing homes legally have no lesser rights than anyone else, the combination of an institutional setting and the disability that put the person in the facility in the first place often results in a loss of dignity and the absence of proper care.

As a result, in 1987 Congress enacted the Nursing Home Reform Law that has since been incorporated into the Medicare and Medicaid regulations. In its broadest terms, it requires that every nursing home resident be given whatever services are necessary to function at the highest level possible. The law gives residents a number of specific rights, among them:

1. Residents have the right to be free of unnecessary physical or chemical restraints.
2. When a resident experiences any deterioration in health, or when a physician wishes to change the resident's treatment, the facility must inform the resident, and the resident's physician, legal representative or interested family member.
3. Facilities must inform residents of the name, specialty, and means of contacting the physician responsible for the resident's care. Residents have the right to participate in care planning meetings.
4. The resident has the right to gain access to all his or her records within one business day, and a right to copies of those records at a cost that is reasonable in that community.
5. The facility must provide a written description of legal rights,

explaining state laws regarding living wills, durable powers of attorney for health care and other advance directives, along with the facility's policy on carrying out these directives.

6. At the time of admission and during the stay, nursing homes must fully inform residents of the services available in the facility, and of related charges.

7. The resident has a right to privacy, which is a right that extends to all aspects of care, including care for personal needs, visits with family and friends, and communication with others through telephone and mail. Residents thus must have areas for receiving private calls or visitors so that no one may intrude and to preserve the privacy of their roommates.

8. Residents have the right to share a room with a spouse, gather with other residents without staff present, and meet state and local nursing home ombudspersons or any other agency representatives. Residents may leave the nursing home, or belong to any church or social group. Within the home, residents have a right to manage their own financial affairs, free of any requirement that they deposit personal funds with the facility.

9. Residents also can get up and go to bed when they choose, eat a variety of snacks outside meal times, decide what to wear, choose activities, and decide how to spend their time. The nursing home must offer a choice at main meals, because individual tastes and needs vary. Residents, not staff, determine their hours of sleep and visits to the bathroom. Residents may self-administer medication.

10. Residents may bring personal possessions to the nursing home, such as clothing, furnishings and jewelry.

11. Nursing home residents may not be moved to a different room, a different nursing home, a hospital, back home or anywhere else without advance notice, an opportunity for appeal and a showing that such a move is in the best interest of the resident or necessary for the health of other nursing home residents.

12. The resident has a right to be free of interference, coercion, discrimination, and reprisal in exercising his or her rights. Being assertive and identifying problems usually brings good results, and nursing homes have a responsibility not only to assist residents in raising individual concerns, but also to respond promptly to those concerns.

Resolving disputes

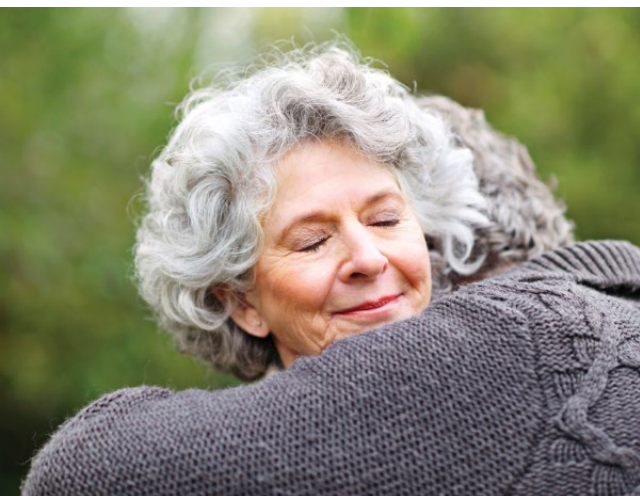
The nursing homes that live up to the ideal of what we would want for our parents or ourselves are few and far between. The question is how far you can push them towards that ideal, what steps to take in pushing, and at what stage does the care become not only less than ideal, but so inadequate as to require legal or other intervention. This can be a hard determination to make and in some cases needs the

involvement of a geriatric care manager who can make an independent evaluation of the resident and who has a sufficient knowledge of nursing homes to know whether the one in question is meeting the appropriate standard of care.

Following is a list of the interventions a family member may take, in ascending order of degree. Move down the list as the severity of the problem increases or the facility does not respond to the less drastic

actions you take. In all cases, take detailed notes of your contacts with facility staff and descriptions of your family member and his or her care. Always note the date and the full name of the person with whom you communicate.

1. Talk to staff. Let them know what you expect, what you care about and what your family member cares about. This may easily solve the



problem.

2. Talk to a supervisor, such as the nursing chief or an administrator.

Explain the problem as you see it. Do it with the expectation that the issue will be favorably resolved, and it may well be.

3. Hold a meeting with the appropriate nursing home personnel. This can be a regularly scheduled care planning meeting or you can ask for a special meeting to resolve a problem that wasn't resolved more informally.

4. Contact the ombudsperson assigned to the nursing home. He or she should be able to intervene and get an appropriate result. To find the ombudsperson nearest to you, contact the Ombudsman office in your state, which can be found at tcombudsman.org

5. If the problem constitutes a violation of the resident rights described above, report it to the state licensing agency. This should put necessary pressure on the facility.

6. Hire a geriatric care manager to intervene. An advocate for you who is not as personally involved as you and who understands how nursing homes function as institutions can help you determine what is possible to accomplish and can teach the facility to make the necessary changes.

7. Hire a lawyer. While a lawyer may be necessary to assert the resident's rights, the involvement of an attorney may also escalate the dispute to a point where it is more difficult to resolve. This is why we have listed this as one of the last options. But when all else fails, a lawyer has the tools to make the facility obey the law.

8. Move your relative. If nothing else works, move your family member to a better facility. This may be difficult, depending on the situation, but it may be the only solution. It does not prevent you from pursuing legal compensation for any harm inflicted on the nursing home resident while at the earlier facility.

9. Sue the facility. If your relative is injured in the facility, whether

through negligence, abuse, or no one's fault, make sure the incident is recorded in his or her medical records and consult with an attorney. The lawyer can help you to decide whether a suit should be brought against the facility. Don't avoid dealing with a problem, whether it's an injury or not, because you are afraid of reprisal against your family member. Your attorney can work with you to make sure your relative is protected. This may involve the relative moving to another facility prior to making any claim.

Justice in Aging's guide, *20 Common Nursing Home Problems – and How to Resolve Them*, offers clear explanations of relevant law and careful instructions on how a resident, family member or advocate should proceed. For more, go to tinyurl.com/ela-20commonproblems.

Nursing home myths and realities

Myth:	Reality:
Medicaid does not pay for the service you want.	Medicaid residents are entitled to the same service as other residents.
Only staff can determine the care you receive.	Residents and family have the right to participate in developing a care plan.
Staff cannot accommodate individual schedules.	A nursing home must make reasonable adjustments to honor residents' needs and preferences.
You need to hire private help.	A nursing home must provide all necessary care.
Restraints are required to prevent the resident from wandering away.	Restraints cannot be used for the nursing home's convenience or as a form of discipline.

Family visiting hours are restricted. Family members can visit at any time of day or night.

Therapy must be discontinued because the resident is not progressing. Therapy may be appropriate even if resident is not progressing; Medicare may pay even without current progress.

You must pay any amount set by the nursing home for extra charges. A nursing home may only require extra charges authorized in the admission agreement.

The nursing home has no available space for residents or family members to meet. A nursing home must provide a private space for resident or family councils.

The resident can be evicted because he or she is difficult or is refusing medical treatment. Being difficult or refusing treatment does not justify eviction.

Source: "Twenty Common Nursing Home Problems and the Laws to Resolve Them" by Eric Carlson, J.D. Originally published in *Clearinghouse Review Journal of Poverty Law and Policy*, January/February 2006 39(910):51933

To find a qualified elder law attorney, go to elderlawanswers.com.