

**“Finding a Nursing Home: What You Need to Know!”**  
**Key Issues to Consider During Nursing Home Selection and Admissions**  
**Project 2025 LTC Audio-Conference Series**

August 7, 2008

*Speakers*

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- Today’s session on finding a nursing home and some issues to consider before signing an admissions agreement
- This is the 1<sup>st</sup> Audio Conference in a Six-Part Series that will cover the key information older adults and their caregivers need to know when making decisions about long-term care
- Other sessions scheduled (all at 10:00am Eastern)
  - ❖ August 14<sup>th</sup>: Nursing Home Residents’ Rights
  - ❖ November 13<sup>th</sup>: Alternatives to Nursing Homes
  - ❖ November 20<sup>th</sup>: Care Issues
  - ❖ December 3<sup>rd</sup>: Residents’ Rights & Surrogate Decision Making
- Materials on these topics can be found at [www.valegalaid.org](http://www.valegalaid.org) under Elder Law

Our first topic today is how a family or prospective nursing home resident should go about the process of finding the right nursing home.

**(Q) I guess this can be a pretty difficult process for family members. What sorts of things should a person be aware of when it comes to choosing a nursing home?**

**A)**

- First and foremost, it’s important for people to be aware that there are often a number of alternatives to nursing home placement, depending on the individual’s condition, preferences, resources, etc. Home care, adult day care, assisted living, or some combination of things may be options. These are more realistic options if one thinks and talks about preferences regarding long-term care before the need is upon them.

(We will talk about some of these options in greater detail in a later audio conference.)

- Unfortunately, most often the choice of a nursing home comes at a time of crisis and stress – Often a nursing home placement follows a hospitalization for a medical crisis of some sort – a stroke, for example, or hip fracture that required hospitalization and that will require some period of rehabilitation after the hospital or possibly long-term care for the foreseeable future.
- Families are often caught in the dilemma of having to make such decisions among limited options within a few days. In these circumstances, hospital social workers and discharge planners can be a help in identifying possible nursing homes with available beds, but cannot necessarily recommend a nursing home. **It's really up to families to do the homework.**

**(Q) What's the homework?**

A)

1. Make sure that you or your family member has had a good evaluation to assess condition and needs, whether it is anticipated that he or she will need short-term rehab or longer term care. That may influence the facility choice.
2. Identify specific needs:
  - If there is a need for short term rehab – say physical and speech therapy following a stroke, you will want to check out the quality of the therapy services offered
  - If the prospective resident has dementia, then the quality of the staff's training and the overall nursing home program and services related to this kind of care will be critically important. Some nursing homes have separate units that are designed to prevent residents from wandering out of the unit.
3. Consider payment issues:

- What will be the method of paying for care? If there will be a need for Medicare or Medicaid coverage, you must choose a nursing home that is “certified” to receive Medicare or Medicaid payment. Medicare will generally only pay for skilled care – most often for a limited period of time following a hospital stay. Not every nursing home has skilled care.
- If you are working with a hospital discharge planner, he or she will be familiar with what nursing homes take Medicare or Medicaid, and what nursing homes have beds available.

4. Consider location – a **key issue**.

- Finding a nursing home that is in close proximity to enable regular visits by family and friends is an important consideration, as this can have a major impact on the quality of life as well as the quality of care the resident experiences.
- So...once you considered these key factors, you will have narrowed the choices of facilities.
- Now that you’ve narrowed the number of homes to consider, you want to broaden the sources of information you tap to compare the nursing homes.
- To get more information ask around – to neighbors, friends, physician, clergy, LTC Ombudsman, citizen and family groups – If a nursing home has a reputation in the community as good or bad, that’ worth paying attention to.

**(Q) Are there specific resources that can be helpful to a prospective resident or family member in trying to make a selection?**

**A) YES - Other sources of information:**

- The Prospective Resident
- Local Long-Term Care Ombudsman

(Q) What is an Ombudsman?

A) Long-term Care Ombudsmen serve as an advocate for older persons receiving long-term care services. Ombudsmen provide older Virginians and their families with information, advocacy, complaint counseling, and assistance in resolving care problems.

- “Nursing Home Compare” website is a federal website that provides some basic data about nursing homes:
  - Staffing
  - Past violations
  - QM’s - how the home comes out on some quality measures
  - SFF - whether they are on a national list of the worst facilities in each state – those that have had repeated care problems (called “**Special Focus Facilities**”)

\* **Limitations**\* **NOTE: NH Compare is just a starting point --**  
There is NO detailed information on inspection results or nursing home ownership

- State Nursing Home Inspection Reports – available at the NH

You can also - -

- Check with Local Ombudsman
- Complaint information

**(Q) How important is it that a prospective resident or a family member visit the facility beforehand? Are there particular things that a person visiting a nursing home should be looking for? Times of day to visit?**

**A) EXTREMELY IMPORTANT!!!**

- You may want to visit the nursing home several times if possible. At least one of those times should be unannounced.

- You may want to visit the nursing home several times if possible. At least one of those times should be unannounced.
- **5 Senses** - Use all of the senses - -Pay attention to the smells, the way staff interacts with residents (Do they treat residents with kindness and respect? Do they seem to know the residents they are caring for?)
- Are residents lined up in hallways, seeming to be restrained or over-medicated? OR are they involved in meaningful activities, pleasant interactions with staff and other residents, enjoying time out of doors?
- Visit during meal times – Does food look and smell appetizing? Are residents being assisted?
- Does the group dining experience seem to be pleasant and relaxed?

**(Q) What kind of questions should be asked of staff and to whom should those questions be directed?**

A) Questions to ask the Nursing Home Administrator:

- Can residents bring their own belongings to the home?
- What is the nursing home's policy on visiting?
- What does the nursing home do to ensure that a new resident is made to feel comfortable and at ease?
- If your review of the most recent survey report gives you concern, asks the administrator to tell you more about the problems referenced there, and how the nursing home has corrected those things.
- How many residents is each nursing assistant responsible for? Is it the same level at night as during the days? Are the same staff assigned regularly to the same group of residents (“consistent staffing”) so that they know and understand the residents' needs?

- How long has the Administrator been there? How long has the Director of Nursing been at the nursing home?

**(Q) Should you talk to other residents and family members, and if so, what kinds of questions should you ask?**

**A) Absolutely-**

- Talk to residents and family members about their experience there. Ask them if there are there things they wish were different. Ask them what they like **best** and **least** about the nursing home?

**(Q) Ok, let's assume you have decided on the right nursing home and you are getting ready for the resident to move in. Are there things you need to ask the admissions person before you sign any papers?**

**A) Yes**

- You want to be sure you have been fully advised about **costs**—if the resident is on Medicaid, most everything should be covered by Medicaid and the resident will only be allowed to keep \$40/mo personal needs allowance. If the resident is private pay, you need to ask what the base rate is and what that covers and what additional costs, if any, there may be.
- You **cannot be required to waive any rights to Medicaid or Medicare**—e.g. cannot be required to say will be private pay for at least 6 months before apply for Medicaid.
- As far as any Medicaid-eligible resident, a nursing home cannot charge, solicit, accept or receive any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in a facility.

**(Q) What should you do before signing an Admissions Agreement?**

**A)**

- **Read carefully before signing.**
- Ask questions if don't understand.
- If not in an emergency, have a lawyer or someone else read the contract before you sign it.
- May want to politely refuse to sign parts of it or to cross out and initial certain provisions.

**(Q) Are there any provisions in standard nursing home admissions agreements that you might not want to sign?**

**A) Yes- You should consider NOT signing all or part of the agreement if certain provisions are present. These **RED FLAG** provisions include:**

➤ **Third Party Guarantee Provision**

- What the facility can and cannot require of a responsible party. By federal (42 CFR 483.12(d)(2)) and state law (§ 32.1-138.3) a facility which is certified by Medicare or Medicaid cannot require a third party guarantee of payment as a condition of admission or expedited admission to or continued stay in the facility. Can require a person with legal access to the resident's income or resources available to pay for resident's care to sign a contract to provide payment from the resident's income or resources but without incurring personal financial liability except for breach of the duty to provide payment from the resident's income or resources.
- Probably best for only resident to sign as long as resident is competent (presumed to have capacity to contract unless court has found otherwise).
- If resident lacks capacity to sign and you are named as the resident's agent through a power of attorney document, best to sign

clearly as power of attorney—e.g. resident's name by your name, agent for resident's name or resident's name by your name, power of attorney for resident—that way it's clear you are signing as resident's agent and are not making yourself personally liable for resident's bill.

- What if the facility does try to sue the RP for the resident's bill? Contact a lawyer right away—you may have a good defense that you are not personally liable as long as you handled the resident's money properly.

### ➤ **Arbitration Agreement**

- **What is an arbitration agreement?**
  - An agreement that parties agree that future disputes between the parties will go to arbitrator rather than to court (sometimes the terms of the agreement send all claims to arbitration; sometimes terms say arbitration applies only claims raised by the resident but not to claims raised by the nursing home).
- **Why is arbitration not good for nursing home residents?**
  - It is more expensive for nursing home residents because they will have to pay arbitrator's costs and filing fees.
  - There tends to be lower awards for residents in arbitration than in court.
  - Arbitrators may have incentive to rule for nursing home in hopes of getting repeat business.
  - In arbitration the resident gives up their right to jury trial and to discovery.
  - Facilities need to be held accountable for bad care, and it is better to have this be in an open legal process, with discovery of corporate practices rather than in a closed arbitration without benefit of discovery.



- Another problem is that these agreements are to make arbitration mandatory before a dispute has even arisen, rather than the parties making a decision after the dispute has arisen as to whether arbitration or court is the better forum for this particular dispute.
- **Arbitration Agreements are a Source of lots of litigation**
  - Generally over whether the resident had capacity to sign or, if someone else signed the arbitration agreement, whether that person had the authority to act on behalf of the resident such that the resident is bound by arbitration agreement.
  - Sometimes the challenge is whether the terms of the arbitration agreement or the circumstances under which it was signed are so unfair as to be unconscionable and therefore unenforceable—often have to prove both procedural and substantive unconscionability—that is, that the circumstances around the signing and the terms of the agreement are so unfair and one-sided that the agreement should not be enforced.
- Clear that **refusal to sign after admission cannot be grounds for discharge**—not one of six allowed reasons and CMS policy clearly says discharge because of resident’s failure to sign an arbitration agreement is violation of federal law and can be challenged through Medicaid appeal and by enforcement through licensing agency.
- The **Fairness in Nursing Home Arbitration Act (HR 6126 and S 2838)** now before Congress would invalidate mandatory pre-dispute arbitration agreements in nursing home and assisted living and other long term care facility contracts. If you think this is a good idea and would like your Senators and Congressman to support this bill, you may want to contact them now to ask them to support the Fairness in Nursing Home Arbitration Act.  
*UPDATE: S 2838 passed the Senate Committee: on September 11, 2008. The Senate Judiciary Committee ordered S2838 “to be reported without amendment favorably.” The similar bill in the House, HR 6126, passed the House Committee on July 30, 2008 (Source: 9/18/08 - THOMAS - The Library of Congress).*

➤ **Negotiated Risk/ Indemnification/ Waiver of Liability**

- These are provisions which try to limit the nursing home's liability or to get families to provide private duty personnel if they don't think the resident is getting adequate care.
- Sample language such as the services of the facility are "not designed to somehow protect the resident from everyday, normal risks and responsibilities of living, including ...situations such as falling, choking and weight loss and/or dehydration."
- Or "The parties specifically understand and agree that the quality of care provided by this facility is limited by staffing levels provided and quality of staff. Therefore if the Resident and/or RP desire to reduce the risk of injury associated with staffing provided by the facility, they shall arrange for and provide supplemental private duty nursing." And then in all caps "If the resident or RP choose not to provide supplemental private duty nursing, the resident and responsible party agree to indemnify and hold facility harmless for any injury or harm that could have been avoided had supplemental private duty nursing been provided by the resident or RP."
- This kind of language is clearly ridiculous. The resident is paying for the facility to provide care and the facility is required by law to have sufficient staff to provide care for each resident to reach his or her "highest practicable level of functioning." The facility cannot shift its responsibility back onto the resident or family by requiring them to pay for additional care. It is the nursing home's duty to provide appropriate care to prevent skin breakdown and pressure ulcers, dehydration, weight loss, falls, etc. There should not be provisions in the admissions agreement which claim to waive or limit their liability if they fail to provide appropriate care for the resident such that the resident is injured.

- Be concerned if admissions agreement has this sort of provision in it—what does that say about the kind of care the nursing home is prepared to provide?

➤ **Improper Grounds for Eviction or Transfer/Discharge**

- There are **only SIX allowable grounds in federal law for involuntary transfer or discharge from a nursing home:**
  - 1) Necessary for the resident's needs and resident's needs cannot be met;
  - 2) Resident's health has improved sufficiently that no longer needs nursing home care;
  - 3) Safety of others in facility is endangered by resident;
  - 4) Health of others in the facility is endangered by resident;
  - 5) Nonpayment after reasonable and appropriate notice; or
  - 6) Facility ceases to operate.
- If facility lists other grounds for discharge in the admissions agreement or attempts to evict for some other reason—e.g. didn't sign arbitration agreement, or resident is uncooperative, or resident or family didn't follow rules, etc.—that is against federal law and can be challenged.
- That is the topic of our next audio conference and we'll go into more detail then. But a provision in the admissions agreement which seems to add other reasons for eviction should be questioned or challenged.

**(Q) What should you do if there is such a provision in the admissions agreement and you don't want to sign it but also don't want to delay or prevent your loved one from being admitted to that nursing home?**

**A)**

- Speak up, ask questions, respectfully object to provisions you think are inappropriate.
- Whether or not you refuse to sign objectionable provisions may depend in part on whether the resident is already in the facility or not.

If not yet moved in, there may be some risk that if you refuse to sign certain provisions or try to X them out, that the facility will not admit the resident. But they may simply be embarrassed that the provision is in there, may be thrown off by your objection, and may simply allow you to make the change and go ahead with admission.

- If the facility is asking you to sign a provision, such as an arbitration agreement, after the resident has already moved in, then it is an easier call—simply refuse to sign an objectionable provision—refusal to sign an arbitration agreement or any of these questionable provisions is not an allowable grounds for discharge.
- May want to “X” out and initial the illegal provisions and tell the admissions director that you have concerns about this provision and do not want to sign it.
- If the provision is separate and requires a separate signature, or if it says it is voluntary (e.g. third party guarantee or arbitration), simply respectfully point out that it says it’s voluntary and you choose not to agree to it and therefore elect not to sign it. Arbitration agreements may be a separately signed agreement and it may actually state that the parties have voluntarily entered into it—if so, you do not have to sign it. If pre-admission, possibly the facility can choose not to admit the resident but very likely they won’t refuse admission because you refused to sign a voluntary agreement. If after admission, failure to sign cannot be grounds for discharge so no downside to refusing to sign.
- Could contact ombudsman, lawyer, or licensing agency (Office of Licensure and Certification within the Department of Health) to complain about an inappropriate provision in the admissions agreement.

**(Q) Once a resident is admitted, what should the family expect in terms of adjustment, behavior issues?**

**A)**

- Reactions will be as different as residents are different, of course. There often is some adjustment period, and, frankly, it is not unusual for residents to have some anxiety, sadness, even depression can result.
- For residents with dementia, an adjustment to a new and unfamiliar setting, with unfamiliar routines and people can be particularly stressful, and disorienting. Families need to be aware of this, and to expect that residents may be more agitated, emotional, etc. Hopefully, if the resident is dealing with dementia issues, the facility of choice has trained staff well in understanding these behaviors and how to best respond. The family can help a lot by explaining what the resident's normal patterns are, particular triggers the create fear or anxiety in the resident, approaches that seem to work to reassure and calm the resident when upset.

**(Q) How can the family help the resident adjust to living in the nursing home?**

**A)**

- Just as we noted with regard to residents with dementia, it is important for staff to understand as much as possible about the resident – his or her preferences, interests, patterns of eating, sleeping, interacting, assistance needs, etc. The more the family can share that helps the staff get to know the resident as a full human being with needs beyond clinical needs, ideas and preferences, loved one and memories the better the foundation for good and sensitive care.
- Visiting is important at all times, but especially so in the early part of a resident's stay – before the resident has a chance to make connections with people in the new surroundings, feel comfortable with a setting and routine that are not home --- a time when, in a very real sense, the resident is in a full grieving process for what has been lost in terms of the life that was familiar to him or to her up until that point. And the loss of a certain amount of independence that is almost

inevitable in any move to a facility setting – no matter how individualized the care may be.

- Visiting regularly - being present to the resident during such a time - perhaps the single most important way to help.

**(Q) What would be a role that an ombudsman might play prior to or around the time of admission?**

A) Ombudsman provide information on local nursing homes, information on payment and selection process, assistance in interpreting comparative data on websites, etc. Ombudsmen can also help with information regarding admissions contracts, residents' rights in the nursing home, assessment and care planning, problem-solving, etc.

**(Q) What role might Legal Aid play with regard to admission to a nursing home?**

A) Legal Aid could be helpful:

- If there is a Medicaid eligibility problem;
- If want a lawyer to review the admissions agreement;
- After the fact, if the responsible party is sued for the resident's nursing home bill;
- If there is a problem requiring litigation and the nursing home raises the defense that it needs to go through arbitration (although any personal injury or wrongful death or medical malpractice suit would be handled by a private attorney, not legal aid);
- If the nursing home tries to evict (transfer or discharge) the resident.

\*\*\**END*\*\*\*