

# JUSTICE FOR ALL

## NURSING HOME LAW – ONCE BORN, TWICE IN DIAPERS (CHAPTER 1 – HOW TO SELECT A NURSING HOME)

Nursing homes are an unfortunate byproduct of our modern society. The days of life on Walton's Mountain, when multiple generations lived under the same roof, are, by and large, long gone and mostly forgotten. As more and more families either choose or are forced to rely on two incomes, it leaves no one at home to care for an elderly or infirm parent or relative.

When I decided to start writing *Justice for All*, the topic that I was most excited to write about was nursing homes. In part, this is because a large portion of my practice is devoted to helping the frail, infirm, and elderly who comprise a majority of the residents in nursing homes. I also find it to be one of the more challenging, but also rewarding, areas of the law for me, personally. I like helping people and nursing home residents are, unfortunately, some of the individuals most in need of legal assistance. The things that my eyes have seen and my ears have heard would make even the most jaded individual's heart drop.

One of the problems I soon noticed was that there was too much to cover in one issue. This is an area of the law on which several, multiple volume, books have been written. The solution was simple – dedicate more than one edition of *Justice for All* to nursing home law.

This issue addresses how to select a nursing home in which to place a loved one. In future issues of *Justice for All* I will cover such

topics as residents' rights, the steps that should be taken if you suspect someone is being abused or neglected by the facility's staff, payment and insurance-related considerations, and how the advent of chain nursing home facilities has affected the quality of care received by residents.

### SOME BACKGROUND INFORMATION

Based on a study conducted by the Henry J. Kaiser Family Foundation, as of 2007, there were about 1.4 million Americans living in roughly 15,300 nursing homes located throughout the United States. At the same time, about 15,500 Alabamians were living in the state's 161 nursing homes. Many of these individuals are largely or entirely dependent upon the assistance of others to care for their most basic daily needs. As the "baby boomers" continue to reach retirement age, these numbers will grow.

### COMMON MISCONCEPTIONS

Many people associate nursing homes with "a place where old people go to die." Most, but not all, nursing home residents are "elderly." However, not everyone falls in this category. As explained below, it is not uncommon for there to be at least a few residents in a nursing home who are "young" by just about anyone's definition.

### LONG-TERM AND SHORT-TERM CARE

Most nursing homes are laid out so that

residents with similar needs are grouped together. One area is for residents who are expected to be there only a short period of time. They may have just been released from a hospital and require therapy (*i.e.*, physical therapy, rehabilitative therapy, speech therapy) before being ready to return home. This could be because they recently sustained an injury, such as a broken hip, or had a mild stroke. In either instance, the goal is to “get them back on their feet.” Some of these people are quite young. Still others are much older, but need time to recover before going home.

In another area of the same facility there are long-term residents. Many of these individuals will probably require extensive care for the remainder of their lives. Most will never return home, but will remain in the nursing home until they die.

Individuals with Alzheimer’s or dementia are typically segregated from the rest of the residents. This is because of the high level of care that they require and the increased likelihood of elopement (leaving the facility) or accidental injury to themselves or others. Anyone who has ever been a caregiver to a family member or friend with Alzheimer’s or dementia understands the difficulties associated with caring for them.

## **THE TIME TO ACT IS NOW**

It is never too early to begin planning for your (or a loved one’s) long-term care needs. Consider this simple comparison – would you wait until your car runs out of gas before you start looking for a gas station?

Most people spend far more time picking out a new (or even used) car than selecting the place where they (or a loved one) may end up spending the last days, months, or even years of their lives. Oftentimes this is because people just don’t think that they will ever end up in a nursing home. Please do not procrastinate -- now is the time to research the different options available to you.

In many instances the individual in need of such care has just been discharged from the hospital (frequently because of health insurance issues), but their treating physician wants them to be transferred to a nursing home for therapy. In this situation, the family may be pressed to make some quick, critical decisions. To find a nursing home that: 1) has a bed available; 2) can provide the level of care needed; 3) will accept the potential resident’s insurance; 4) is reasonably affordable (if insurance does not cover all costs relating to care); and 5) is nearby, may seem virtually impossible. This does not take into account whether, under any circumstances, you would even consider allowing your loved one to stay at a particular facility (based on the various factors addressed herein).

## **SELECTING A NURSING HOME**

There are 14 nursing homes in Madison County (11 of which are located in Huntsville). In order to choose the right one, you will need to invest some time. This may seem like an overwhelming task, but there are many resources available to assist you. I would suggest that you take advantage of several of the following sources and be prepared to ask some tough questions.

### **Alabama Department of Public Health**

Access the Alabama Department of Public Health’s (ADPH) website ([www.adph.org](http://www.adph.org)). On the right hand side is a link entitled “Find a directory of healthcare facilities?” Click on it and an Adobe form will appear. Click on “Select a facility type,” select “Nursing Homes,” and then choose a specific city or county. You will see a list that includes each facility’s name, address, telephone number, number of beds, and identification numbers. Print out this list.

Return to the ADPH website home page. On the right hand side is a link entitled “Review healthcare facility deficiencies?” Click on it and another page will appear. Scroll down to “[View Health Care Facility Deficiencies.](#)” Click on it.

You will see a list of all healthcare facilities in the State of Alabama, in alphabetical order. In the upper left hand corner, click on “County.” Scroll down or go to the next page until you find the correct county. Click on the blue arrow to the left of the name of the county. Find the subheading “Nursing Homes” and click on the blue arrow next to it. Note: for Madison County you will need to go to the next page. You should now see a list, in alphabetical order, of each facility. Click on the blue arrow next to a particular facility and a list of dates on which surveys (inspections) were conducted by the ADPH will appear.

Click on the date of the survey and a document entitled Health Care Facilities 2567 Survey Form will appear. At the bottom of the page is an Adobe link. Click on it. You will now see a copy of the Statement of Deficiencies. Each entry (*ex.* F 164) in the left column is a federal regulation with which the facility has failed to comply. These are commonly referred to as F-tags. The next column explains each deficiency. A long list of deficiencies is not a good sign. However, the *types* of deficiencies are more important than the *number* of them. Those relating to inadequate patient health and medical care are typically the biggest concerns. This includes signs of malnutrition, poor hygiene and infection control, bed sores, bruises, soiled undergarments, failure to properly administer medication, slow responses to resident call lights, and incomplete or inaccurate patient charting.

The next to last column on the right is where the nursing home identifies its proposed plan to correct each deficiency. This information can only be obtained by submitting a written request to the ADPH.

The completed Survey Forms provide a good basis for determining whether a particular facility is one that you should even consider.

### **Google Maps / Mapquest**

Access Google Maps, Mapquest, or a

similar website to determine the location of the facility and how far it is from your home. Studies have shown that the closer a nursing home is to a family’s house, the more likely they are to visit on a regular basis, which is essential for the mental, emotional, and physical wellbeing of the resident.

### **Nursing Home’s Website**

Pull up the facility’s website and see how it compares to what you learned by reviewing the Survey Forms. You will probably be somewhat surprised at the difference between appearance and reality. By clicking on various links (especially those relating to employment), you should be able to tell whether this facility is locally owned or part of a large regional or national “chain” of nursing homes. I will address, in detail, the significance of this consideration in an upcoming issue of *Justice for All*; however, suffice it to say that bigger is not always better.

### **5 Star Rating**

Determine the facility’s rating using the 5 Star Rating System recently implemented by the Centers for Medicare and Medicaid Services (CMS). Access CMS’s website at [www.medicare.gov](http://www.medicare.gov). Scroll down until you see the heading “Search Tools.” Click on “Compare Nursing Homes in Your Area.” Then Click on “Find and Compare Nursing Homes.” Select the city, state, and distance. A list of nursing homes will appear. Each is graded, using several different criteria, on a scale of 1 to 5 stars (1 being the worst and 5 being the best). You can now compare facilities on an “apples to apples” basis. Click on the name of a facility to find out why it received the assigned rating. Obviously, you should avoid any facility with a low rating.

### **Visit the Facility**

Visit each of the nursing homes that you are considering. This is the single most important step in the process because it allows you to judge the facility based on your own observations. It

also affords you the opportunity to ask those responsible for running the nursing home some very important questions.

Although it may seem impolite, you should *not* schedule an appointment the first time you visit a nursing home. Only by arriving unannounced will you get a true sense of how the facility actually operates and the quality of care received by the residents.

When you arrive at the nursing home, pay close attention to what you see, smell, and hear. The first thing you will probably notice is the smell. Based on my experience, many nursing homes smell like urine and excrement or ammonia (or some other cleaning solution).

Upon arriving you will probably be met by the Director of Admissions. This individual is basically a salesperson for the nursing home. It is unlikely that you will meet either the Administrator or the Director of Nursing – the two individuals at the facility most responsible for overseeing its operations. However, you should ask to see and speak with both of them.

When you meet with the Administrator, Director of Nursing, or Director of Admissions, be prepared to ask some very pointed questions and insist on complete, responsive answers. Also ask for all of the promotional literature and other materials (to include any videotapes/DVDs) relating to the facility.

Make sure that you obtain blank copies of all documents that you or a family member will be asked to review and sign upon admission to the facility. Be sure to take the time to review them. Later, you may want to go over them with a doctor and/or an attorney. Remember that this is a significant, potentially life-altering, decision and fully deserving of your time and attention.

If I was to walk into a nursing home today and could only ask a few questions, they would include the following (in no particular order):

1. Who owns this facility and where are they located?
2. Do you have a pre-admission arbitration agreement? Are new residents required or even asked to sign it?
3. Who is the medical director and how often does he/she actually come to the facility and see each resident?
4. Can my (parent, grandparent, *etc.*) select his/her own treating physician?
5. How many beds are there in the facility? (*ex.* 150 beds)
6. What is the typical percentage of beds occupied by residents? (*ex.* 140 beds or 95%)
7. How many aides (certified nursing assistants or CNAs) are there on each shift?
8. How many RNs (registered nurses) and LPNs (licensed practical nurses) are there on each shift?
9. What is the daily food budget per resident and does that amount include snacks and drinks?
10. Has this facility been cited by the Alabama Department of Public Health (or another governmental entity) any time within the past 5 years? If so, for what and what have you done to ensure it won't happen again?
11. Based on the type of insurance that my (parent, grandparent, *etc.*) has, how much will it cost her/him to stay in the facility? Is there anything that is not included in this amount?
12. Will this facility be able to care for the specific needs/condition of my (parent, grandparent, *etc.*)? Please explain how you are particularly qualified to do so? This could involve dementia, Alzheimer's, diabetes, paralysis,

obesity, incontinence, rehabilitative therapy, or various other infirmities or special needs.

13. What are the facility's emergency preparedness and evacuation plans (in the event of fire, tornadoes, *etc.*)?

You must be provided with answers to *all* of these questions. The Admissions Director, Director of Nursing, or Administrator should know the answers. If they claim that they do not, assume they are not being honest. As you can tell, most of this information is available from one or more public sources.

### **Walk-Through Tour of Facility**

While you are at the nursing home, be sure to go on a tour. If you have not scheduled your visit in advance, it is best to do this first, so that the staff does not have as much time to "prepare." While walking through the facility, make a mental note of everything that you see, smell, hear, and otherwise observe.

It is a good idea to have a checklist that you complete either during your tour or immediately after you are finished. Although I could provide a comprehensive checklist, due to space constraints, I will simply refer you to one of the many that are available on-line. Return to [www.medicare.gov](http://www.medicare.gov). Once again, click on "Compare Nursing Homes in Your Area." Scroll down until you see the heading "Additional Information." Click on [Nursing Home Checklist](#). Click on [View Adobe PDF](#). An easy-to-use document entitled "Nursing Home Checklist" will appear. Use this to evaluate and compare the nursing homes that you visit.

### **ADDITIONAL RESOURCES**

There are several other organizations that offer guidance or assistance in selecting a nursing home. The following are but a few that may be of assistance.

**Top of Alabama Regional Council of Governments (TARCOG).** The Long-Term Care Ombudsman is responsible for educating residents and family members of their rights and ensuring that nursing homes comply with applicable federal and state laws. They can be reached at 256-830-0818 or [www.alarc.org/tarcog](http://www.alarc.org/tarcog). Ask to speak with Barbara Burhans or Bettye Dixie.

**American Association for Retired People (AARP)** – [www.aarp.org](http://www.aarp.org).

**National Senior Citizens Law Center** – [www.nsclc.org](http://www.nsclc.org).

**National Center for Assisted Living** – [www.ncal.org](http://www.ncal.org).

**National Citizens' Coalition for Nursing Home Reform** – [www.nccnhr.org](http://www.nccnhr.org).

**People Over Profits** – [www.peopleoverprofits.org](http://www.peopleoverprofits.org).

**Member of the Family** – [www.memberofthefamily.net](http://www.memberofthefamily.net).

I also recommend reading one or more books or pamphlets on the subject. Although there are many different publications available, you might want to consider the following.

*A Consumer Guide to Choosing a Nursing Home*, published by the National Citizens' Coalition for Nursing Home Reform and available, free of charge, at [www.nccnhr.org](http://www.nccnhr.org). Visit their website, click on the heading "Fact Sheets" on the left hand side, and then click on "[Consumer Guide to Choosing a Nursing Home](#)." This document also contains a helpful checklist.

*20 Common Nursing Home Problems – and How to Resolve Them*, published by the National Senior Citizens Law Center and available for \$9.95 at [www.nsclc.org](http://www.nsclc.org). An informative and easy to read 38 page pamphlet.

*The Baby Boomer's Guide to Nursing Home Care*, also written by the National Senior Citizens Law Center. A must read for anyone considering placing a family member in a nursing home. A 194 page (easy-to-read and understand) step-by-step guide covering everything from selecting a nursing home to resident rights. The cost is \$14.95.

## CONCLUSION

Selecting the right nursing home for a loved one is a decision that should not be made at the last minute. To make a truly informed decision, you must be willing to invest some time and effort, and do the necessary advanced planning. By following the procedure outlined herein, you should be in a better position to make a well-informed decision. Remember – whether you are “old” or not, there is a pretty good chance that a grandparent, parent, family member, friend, or even you will end up in a nursing home. Thus,

the time to act is now!

## ADDENDUM / UPCOMING SEMINAR

Our office is planning to offer a free seminar on nursing home law sometime in the next few months. In all likelihood, this will be held at a local hotel on a Saturday (not at the same time as an Alabama or Auburn game) and last about 2 hours. We expect to cover a variety of topics relating to this important area of the law and will try to answer any questions you might have. Family members and friends are welcome to attend. More information (such as date, time, and place) will be provided at a later date.

We would like to get some idea as to the level of interest among our readers. If you (or someone else you know) might be interested in attending, please contact Marlene Koch at [mlk@ryderlaw.com](mailto:mlk@ryderlaw.com) or 881-3881.



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