A Family’s Guide to Choosing the Right Virginia Nursing Home for Your Loved One
A Family’s Guide to Choosing the Right Virginia Nursing Home For Your Loved One

(And What to Do When the Unexpected Happens)

BY: VIRGINIA ATTORNEYS BEN GLASS & GRACE CARROLL
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DISCLAIMER

Having ordered this book does not create an attorney-client relationship between you and BenGlassLaw or Carroll and Carroll, PC.

The information contained within is intended to help guide through the process of finding the right nursing home for your loved one(s) and to give you information on the litigation process should you discover any signs of abuse or neglect. Keep in mind that the laws can change and you should contact a qualified attorney if you suspect that the standard of care has been violated.

About Ben Glass

Ben is a medical malpractice attorney in Virginia and has represented victims and their families since 1983. He is well known in his industry as a premier expert. Ben has authored many books and consumer guides including, Five Deadly Sins That Can Wreck Your Injury Claim, Buying Car Insurance: The Ultimate Guide to Protecting Your Family From Irresponsible Drivers in Virginia, The Truth About Lawyer Advertising and Why Most Medical Malpractice Victims Will Never Recover a Dime.

Ben is a member of the D.C. Trial Lawyers Association and the American Association for Justice. He has frequently lectured continuing education courses on such topics as medical malpractice, medical experts, proving damages and much more.
Introduction

The day you hoped would never come may have finally arrived.

Your father or mother might have reached that point in life where living on his or her own is no longer an option. The thought of your family member being in such a vulnerable position might be unbearable and heartbreaking. If you are facing a situation where you know your loved one needs the care provided by a nursing home or assisted living facility, you need to take action. Each step you take should be carefully considered, as you do your best to ensure your family member is protected.

Nursing homes and assisted living facilities have an important role in our society. These institutions offer attention and assistance to people when they need it most, whether they are recovering from a stroke or need 24-hour skilled nursing care. Yet, for most families they quickly find themselves in unfamiliar territory, as they have to decide between the various types of facilities and choose the one that is most appropriate for their loved ones. That is a big responsibility!

There are often many questions that people have regarding nursing homes, including how to find the right institution and how to know if their family members are receiving good care. Then, there are the questions about abuse and neglect. How do you know when the care providers are abusing someone? What are the signs of neglect? If your mother, father, grandparent or other relative will be cared for in a nursing home, these are questions you need to be able to answer.

If you are even considering placing your loved one in a nursing home or other facility, it is a good thing you have picked up this book. It will walk you through how to choose the right nursing home, from understanding the different care centers to knowing where to look. Once you have a list of potential nursing homes selected, you will then need to research each one, to ensure that it is a safe environment for your family member. It is, without question, one of the most difficult tasks with which you will be faced. Our goal is to equip you with the knowledge you need to make an informed decision. You don’t want to go into the decision-making process blindly.

When individuals go into a nursing home, they typically have a need. It could be that they are older and have reached the point where they can no longer care for themselves, or they have had a serious injury and need rehabilitation. Throughout this book, we talk about what families need to know, including what to look for, meaning what is normal in terms of recovery and what is abnormal. Additionally, we address common avoidable problems that arise, such as pressure sores, bruising, malnutrition, dehydration and other issues.

As a family member, it is hard to know what to
expect and how things work. You might also be wondering when to step in if there is a suspected problem. It can be confusing knowing who to talk to about an issue of concern. Do you speak with the nurse at your loved one’s bedside or do you go straight to the administrator?

Sometimes, patients are injured either because of neglect or abuse. In this situation, you need to know the legal procedure involved, including whether you will have to go to arbitration. If you do end up needing an attorney to help you, it is imperative that you know which qualifications to look for and how to find the best attorney for your circumstance. Nursing homes are very savvy. It is a business for them, so you need to work with someone who has experience not only in the malpractice arena but with nursing home cases as well. You and your family deserve to have your voices heard when there are problems and that is exactly what an experienced lawyer will be able to do for you.

We hope that during the time your family member is living in the nursing home that you never find yourself facing a legal battle. We know it is emotionally draining. The last thing you want to do is live through the whole situation again. Because this book is such a comprehensive guide to choosing a nursing home, knowing what to expect and recognizing if there is a problem, you may find that you won’t need the help of a lawyer and that you will be able to resolve problems if they arise. In fact, that is our very hope with this book. We want you to know what steps to take to ensure that your family member receives high quality care that he or she deserves and that your family is paying for. In essence, you will become the advocate for your loved one.

We decided to team up to write this book because throughout our years of experience we have recognized that there is a lack of information available to the public. Grace Carroll has spent the last 13 years exclusively representing families and individuals who have been abused or neglected in nursing homes and is considered one of the top experts. She is a former prosecutor and in her early years she represented the nursing home facilities. Therefore, Grace truly understands both sides to a nursing home case and uses her knowledge to help her clients.

Ben Glass also formerly represented insurance companies, but now focuses on representing plaintiffs in medical malpractice cases. He has been able to help countless families in Virginia resolve complicated legal issues and has written numerous consumer guides available to the public. He is a nationally recognized author, speaker and legal expert.

Nursing home care is not fun care, but with the proper knowledge, you can protect your loved one from harm.
CHAPTER ONE
What’s the Difference Between Facilities?

There are all types of advertisements for long-term care facilities. But how do you know the difference between the facilities being advertised and the type of care that will be provided?

As we mentioned previously, families who are in the process of choosing a nursing home quickly find themselves in unfamiliar territory. There are numerous nursing homes and assisted living facilities. It is hard to know what each institution offers, not to mention which one is the best fit for your loved one. We’re going to describe the details and purposes of the different types of facilities to make it just a little easier when starting on your journey to select a place for your loved one.

**Nursing Homes**

By definition, a nursing home is an institution that provides long-term care for chronically ill patients, usually the elderly. In Virginia, a long-term care facility and a nursing home is basically the same thing. What many people don’t realize is that if their parent falls and injures a hip or some other part of the body and physical rehabilitation is needed, it will be done in a nursing home. A nursing home, rehabilitation center or long-term facility is considered to be the same under the law. So, it doesn’t matter what name or designation is given, in the eyes of the law there is no difference.

A nursing home is for someone who needs skilled nursing care around the clock. For example, if your parent is suffering from dementia or another mental condition that makes caring for him or herself impossible, a nursing home might be the answer.

**Assisted Living Facilities**

As we age, it can become more difficult to perform the little everyday tasks, like remembering to take medication. This type of situation is ideal for assisted living facilities. When people live in assisted living facilities, they are not going to have nurses in their rooms, checking on them throughout the day. Instead, they are going to have someone who is watching over them. When you think of assisted living, think of a personal aide, not a 24-hour nurse.

These institutions provide services for people with disabilities or special needs, who are typically elderly. They are designed to help individuals who might not require 24-hour skilled nursing care, but who still need help with daily living.

**Determining Which Facility is the Best Fit**

Let’s say your father is recovering from an injury or a stroke. There is a strong likelihood that he will be going straight from the hospital to a rehabilitation center to recover. How much trust can you put in what the social worker or hospital tells you about the facility? Can a social worker really know which institution might be appropriate for your father?

You have to proceed cautiously in this day and age, because the hospital will be looking to discharge a
patient as soon as possible. Nursing homes market to social workers, because they know that these workers are the ones who will recommend the facilities. You need to be aware of this fact and become savvy regarding the relationship between social workers and nursing homes. We won’t go as far as to say that social workers are pressured by local nursing homes, but representatives from these homes will visit the hospitals and social workers might identify some of the patients as ones who are looking for rehabilitation centers.

A social worker will conduct a search to see where beds are available in the local area. He or she will also take into account whether your family member is a Medicare patient or private pay. Nursing homes and rehabilitation centers generally take private paying patients, meaning they will not be using Medicare, Medicaid or insurance to pay for the costs of the facility. However, these institutions typically take a certain number of Medicare patients. That means that a nursing home or other care facility might have a bed available, but if it is not a Medicare bed and that is what you need, then you will need to continue your search.

Each and every facility is different, no matter if it is a privately-owned company or one owned by a large conglomerate. One of the key factors to consider, therefore, is the type of care that your loved one needs. Then find a list of facilities that will match your criteria. For example, some people need lung treatments, while others need feeding tubes. Some patients require breathing treatments, but others might simply need physical therapy after getting a knee replacement. You need to recognize what services will be required for your loved one and then find out if that care is provided at the facility.

Keep in mind that what you see in an advertisement might not be what you are getting. Do your research and look beyond what the ad says. Twenty-four nursing care does not mean that someone will be sitting in your family member’s room 24 hours a day. It may, in theory, mean that someone will be checking on your loved one, administering treatments and giving medications on a 24-hour basis.

Nursing homes, rehabilitation centers and other facilities that fall under the same umbrella, must have a medical director. A medical director is someone who is supposed to be available to the nursing home if the resident’s attending physician is not available or in case of an emergency. Many people make the mistake of believing that their doctors will come with them to the nursing home. However, most doctors do not do rounds at nursing homes. They may be excellent and caring doctors, but they simply don’t have the time or ability to make regular visits. So, when your loved one goes to the nursing home, he or she will be assigned to a doctor who works at the facility. This doctor might also be the medical director. For people who are just starting out in a nursing home, this can be disconcerting, because they have no relationship with the physician.

In the next chapter, we’ll be discussing what to look for when choosing a facility for your loved one.
CHAPTER TWO
Finding the Right Facility

There are hundreds of nursing homes and assisted living facilities throughout Virginia, which serve thousands of patients. How in the world are you supposed to know which facility to choose for your loved one? What happens if the nursing home you select is the wrong one? That is a lot of responsibility riding on your shoulders. Choosing a nursing home is never a decision that should be taken lightly.

If your loved one is in the hospital and will be discharged soon, time is of the essence. You don’t have a lot of time to come to a decision. Instead, you have to quickly choose a facility. You will need to find out if beds are available and how the care will be paid for. Don’t just select the facility that is closest to your home. Although it is important that someone is at the facility every day, or at least every other day, to advocate for their loved one, the level of care has to be top priority when picking the institution.

It might be a scary thought, but someone will need to be your loved one’s advocate. Being an advocate is critical when your loved one is living in a nursing home or other care facility. The harsh reality is that nursing homes are grossly understaffed. The staff is basically a skeleton crew. For example, there is often only one resident nurse per 150 to 200 beds during a night shift and two registered nurses during the day. Even more frightening is that the people who are providing the care are often nurses’ aids who are paid as little as $7.00 to $15.00 an hour. To be a nurses’ aid or Certified Nursing Assistant, you only need 40 hours of training. That’s definitely not a comforting thought since they are providing the vast majority of care!

How to Find a Facility
When you embark on the search for a facility, you should first start out by asking your family member’s attending physician in the hospital what exact care will be needed. Will your father or mother need a feeding tube? Will the main focus of care be on rehabilitating the knee, hip or leg? Find out what the most important issue is that needs to be addressed.

There are independent sources you can use to research facilities. Consumer reports exist regarding nursing homes, as well as what are called surveys through Medicare and Medicaid. If a nursing
home takes Medicare or Medicaid patients, there is a minimum level of care that they must meet according to the Department of Health. The Department conducts surveys of these facilities and posts the results. These visits are supposed to be unannounced and are done on a yearly basis and when needed as complaints arise.

**The best place to go to find information on nursing homes is Medicare.gov.**

The best place to go to find information on nursing homes is Medicare.gov. This government website compares facilities and is the official source of information. There are other sources on the Internet, but again, Medicare.gov is considered to be one of the most reliable sources.

Another good source is the local courthouse. You can find out how often a facility has been sued, but you do need to keep in mind that any big institution that is caring for a lot of patients will be party to a lawsuit from time to time.

Once you compile a list of potential facilities, you need to visit each place. The better nursing homes will allow you to walk around to get a feel for the care provided and environment. Stopping at the business office or front desk will not give you an accurate picture of the facility. We can't stress that point enough. You really need to go on the floor to get a better idea of the level of care. It might be shiny and clean in the reception area, but it could smell like urine or feces in the hall.

As you are walking the floor of the nursing home, look around. Do the residents appear happy? Does the facility look and smell clean? Are there are lot of people parked in wheelchairs in front of the nurse's station unattended? Are there staff members in the hallways? Has someone responded to a resident calling for help? These are the types of things you need to be on the lookout for. If the facility doesn't look good, go to the next one.

When considering a facility, you also need to find out if you can have 24-7 access to your loved one. As we'll mention in the upcoming chapter, this is one of the resident rights, but you should still confirm with the facility that it would not be a problem if you stop by at anytime to see your family member, whether at 7:00 AM or 10:30 PM.

Deciding on a nursing home or assisted living facility should be a family decision. It is also one of those decisions where you will need to trust your instincts when choosing a facility.
CHAPTER THREE
Resident Rights

We have already talked about the difference between facilities and how to select the best one for your situation. Now it is time to discuss what happens once someone is in a nursing home or assisted living facility. Do residents have rights once they are living in the facility?

The law in Virginia is very clear regarding Resident Rights. There are specific laws that are outlined by the federal government relating to residents living in nursing homes or other facilities. Our state has adopted these laws, but not only that, you also maintain your rights as a citizen of the Commonwealth of Virginia. That means you are provided the same rights you had under the law before entering the nursing home. One of the only exceptions is if you lose your faculties and a responsible party is appointed to you.

The following are summaries of some of these rights.

Plan of Care
When your loved one goes into the facility, paperwork should be given that explains the policies and procedures regarding resident rights. One of these rights will have to do with what is known as a plan of care. When someone is admitted to a nursing home, he or she is supposed to know the details of his or her medical condition, as well as the facility’s plan to provide medical care.

Within 48 hours of being admitted, an attending physician and the medical director should evaluate the resident and create a plan of care. This plan is meant to assist the nursing staff in recognizing the attention and services that will be needed. It includes medications, treatments that will be needed, any special dietary needs and other pertinent medical information. In theory, the physician is supposed to do a complete medical examination based on the resident’s medical records. This complete head-to-toe check doesn’t always happen though.

Who is Overseeing the Medication Regimen?
A pharmacy will serve the facility, but it is the attending physician who is supposed to oversee the medication. In reality, the eyes and ears of the physician are the nurses. The licensed practical nurses (LPNs) should get reports from the certified nursing assistants (CNAs) regarding the medications administered and the effect. Therefore, the communication between the entire staff must be very good. Sadly, communication sometimes breaks down, making it a challenge to just get basic medications.
Believe it or not, we have actually heard of situations where the physicians have come in when the responsible party is not there or in the middle of the night and done their assessment for the plan of care. The residents aren’t even conscious during these assessments or aware of the fact that they are occurring.

There is a financial aspect of the plan of care. It should be explained to you whether Medicare, Medicaid or other insurance covers the care that will be administered. The plan of care should also include the surveys of the facility. For example, if the facility had a deficiency that was discovered through an investigation, you should be given a summary of the action and what the facility is doing to correct it. However, in our experience, we have never seen the surveys included in a resident’s paperwork. The only thing we have witnessed are marketing materials that might say something to the effect “We didn’t get any deficiencies in our surveys.” While that might sound like a great claim, it still doesn’t tell you a whole lot about the facility. You can’t tell from this type of statement whether the nursing home is a good one or a bad one.

Chemical & Physical Restraints

There are some scenarios where residents need to be protected from themselves. It could be that they have a mental condition or physical ailment that makes it dangerous to get out of bed without assistance. Now, this situation can be tricky, given that one of the resident rights is that no chemical or physical restraints are to be used. There are some exceptions, though. If the patient has a medical condition that makes him or her a documented risk, physical restraints may be used. For example, if someone is a significant fall risk, his or her chair may be equipped with a strap that has an alarm. If the patient tries to get up, the alarm goes off. That is the type of physical restraint we are talking about. There is never a situation where a nursing home resident should be tied up and bound to a chair or bed. If there is a danger of falling, the bed might be lowered or the mattress might be put on the floor.

Those kinds of actions can sometimes be taken, but the family should be involved and informed in the planning session.

Chemical restraints are an entirely different story. Chemical restraints are very serious. As a family member, you should be advised if a psychiatrist has been called in or if the doctor has prescribed an anti-psychotic medication. You should also be aware if a medication has been recommended that causes “whiting out,” where the patient can do little more than sit in a chair. These medications have a flat effect and cause people to stare off into space, lose their appetite and stop talking. If you have a loved one living in a facility, you need to be aware of the effects of these drugs. Sometimes, a mixture of medications can cause “whiting out.” The nursing home staff becomes too overwhelmed and instead of dealing with what they refer to as a difficult patient, they request that the resident be given medication.

Privacy

One of the questions that often arises regarding nursing homes and other facilities has to do with privacy. Many residents are married and have family members. Each and every resident is entitled to privacy, which includes conjugal visits and private conversations.

If a person lives in a nursing home, but his or her spouse lives elsewhere, the resident should have the ability to have a conjugal visit. However, this situation can be a challenge if there is a double room.

When a married couple lives in the facility together, they are supposed to share a room, if their medical conditions permit. The facility is designed to be the resident’s home and he or she should enjoy the same privileges. Yet, this view is not the one that most people have when they think of nursing homes and assisted living facilities.

The observance of Resident Rights often varies from facility to facility. It is critical that you know what the law says and what you are entitled to. View the following comprehensive list of resident rights below.
RIGHTS OF RESIDENTS IN VIRGINIA NURSING HOMES

1. Is fully informed, as evidenced by the patient’s written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;

2. Is fully informed, as evidenced by the patient’s written acknowledgment, prior to or at the time of admission and during his stay, of services available in the facility, the terms of such services, and related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility’s basic per diem rate;

3. Is fully informed in summary form of the findings concerning the facility in federal Centers for Medicare & Medicaid Services surveys and investigations, if any;

4. Is fully informed by a physician, physician assistant, or nurse practitioner of his medical condition unless medically contraindicated as documented by a physician, physician assistant, or nurse practitioner in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

5. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-138.1 to ensure orderly transfer or discharge, and such actions are documented in his medical record;

6. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

7. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;

8. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;

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How to Choose the Right Nursing Home for Your Loved One

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Rights of Residents in Virginia Nursing Homes

9. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;

10. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

11. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

12. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

13. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;

14. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;

15. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the facility, is permitted to share a room with such spouse unless medically contraindicated as documented by the attending physician, physician assistant, or nurse practitioner in the medical record; and

16. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sexual offenders registered pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon request, the nursing home facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information.

(Extracted from Chapter 5 of Title 32.1 of the Code of Virginia Article 2. Source: Virginia Department of Health Office of Licensure and Certification)
You don’t want to think about problems that might occur in the nursing home or assisted living facility, but you can’t bury your head in the sand. It is important that you know what steps are involved when there is an issue, whether it has to do with the quality of care or the food being served.

Before initiating any complaint, you need to understand the chain of command at long-term care facilities. At the top of this chain is the administrator. The administrator is a businessperson who is licensed to oversee the day-to-day administration of the facility. It is important to note that this person is typically not a doctor, medical professional or nurse. You have to always remember that a facility is a business and will be run as such.

*If you are going to complain, start at the top of the chain of command. Not only that, follow up your complaint in writing and ask that it be included in the chart.*

Below the administrator is the director of nursing. This person is a medical professional and has to be licensed as a registered nurse. The nursing supervisor comes next in the chain of command. Depending on the size of the facility, there might be one or two nursing supervisors. Next come the floor supervisors, who are also registered nurses and then below them are the licensed practical nurses. The requirements to become an LPN are far less stringent than that of registered nurses. At the end of the chain of command are the certified nursing assistants. CNAs are the ones providing the most care to residents.

*For a better illustration of this chain of command, see the sidebar (right).*
Nursing Aides Have the Least Amount of Qualifications, But Provide the Most Care

CNAs, also referred to as nursing aides, may be at the bottom of the chain of command, but they are the ones in the trenches, providing day-to-day care to residents. It is a difficult and demanding job, yet, CNAs are paid just above minimum wage. Many times, they don’t speak English or English is their second language. As a result, a language barrier is created between the nurses’ aide and the resident.

Nurses’ aides are the ones who give meals, assist with toileting, dressing, bathing and repositioning residents. Since nursing homes are typically understaffed, CNAs are overworked, which can lead to many problems.

If you have a complaint against the facility, talking with the supervising nurse might not be enough. He or she could be supervising all of the CNAs on the floor and may not do anything regarding your complaint. If you are going to complain, start at the top of the chain of command. Not only that, follow up your complaint in writing and ask that it be included in the chart. Also, make sure you have a copy for your own records.

Putting your complaint in writing is important for many reasons. First, there is sometimes a dispute as to whether a complaint was ever made. Typically, this dispute doesn’t occur unless a lawsuit is pursued. You might argue that you did complain, but the doctor or director of nursing might say otherwise. Second, most of these facilities have procedures in place regarding grievances. However, when they’re asked to produce any grievances against them, they can’t seem to find any.

If you really want to prove your case and document your complaint, take pictures. Most mobile phones are equipped with cameras. Take out your phone and start snapping photos. For example, if you are complaining about the cleanliness of the facility, take pictures that support your claim, such as dirty...
linens, diapers left out or an overflowing catheter. Grace has even recommended to families that they install nanny cams in their loved one’s room with the consent of the loved one, as it serves as a great way to gauge the level of care being provided.

You do need to be cautious if using a hidden camera or taking photographs. You do not want to infringe on the privacy of a roommate or anyone else living in the facility. It is worth doing your due diligence regarding filming your loved one, as a video will tell you a lot. You will be able to find out if hours are going by before your loved one receives attention. You will be able to see if he or she is being repositioned or toileted every two hours. A video will even show you if the nursing staff is responding to the call bell.

**Complaining Outside of the Facility**

If you have gone up the chain of command with your complaint, but nothing has happened, it might be time to make your complaint outside of the facility. There are agencies that will step in and help when there is a patient complaint.

Every county within Virginia has Adult Protective Services. You can call one of these agencies with your complaint. You might explain, “My mother is in this nursing home and the nursing staff is not doing this...” They will step in if it is a major issue, such as significant bedsores due to suspected abuse, etc.

The Department of Health has a complaint line, which is referred to as the Office of Licensing. You can go straight to the long-term care division with your complaint. Out of all of the agencies, they have the most power, because they are the one licensing the facility.

Finally, there is the Office of the Ombudsman for long-term care facilities, which is located in Richmond, Virginia. The Ombudsman has satellite offices in various regions throughout Virginia. The Long-Term Care Ombudsman Program is designed to advocate for residents and their family members and help them resolve problems. According to their website, ElderRightsVA.org:

“(They) work to resolve problems of individual residents and groups of residents to bring about changes at the local, state and national levels to improve care and quality of life. The cornerstone of this work is Residents’ Rights. While many people receive good long term care services, others encounter problems and neglect.”

The nursing home or assisted living facility should have a posted list showing which agencies you can turn to when you have a complaint. Many times, though, this list isn't conspicuous. Instead it is found in small print over the elevator, or in a location where nobody notices it.

At the end of the day, if you are not satisfied with the care at the facility, you can work on getting your family member transferred to another one. It is not a simple process, but it doesn't mean it shouldn't be done. If your loved one is not provided with quality care, it is worth the arduous process to be transferred. The hardest part will be locating an available bed. If your family member is a private pay resident, it is a little easier than if Medicare or Medicaid is used.

Keep in mind that if there is a critical issue that is endangering your family member, don’t be afraid to call 911 and have him or her be transferred to the emergency room.

There are many signs that would indicate that the level of care is not what it should be. We will be discussing these signs in the next chapter.
Think about it.
You can’t compare one lawyer to another by the ads, can you? Most ads give you very little useful information, don’t they?

That’s why Ben Glass wrote The Truth About Lawyer Advertising: The Complete Consumer Guide to Finding the Right Lawyer for Your Case – All the Time.

A valuable guide – FREE for Virginia residents. Just call our office at 877-940-8618 or go to TheTruthAboutLawyerAds.com

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Really Cool and Slightly Outrageous ADVERTISING MATERIAL
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No one likes to think of the possibility that his or her loved one is not getting optimum care in a nursing home or assisted living facility. Sadly, due to understaffing, residents' needs are frequently neglected. When they ring that call bell or cry out for help, no one shows up to assist them.

**Pressure Sores**

How you know if your mother or father is receiving quality care? There are definite signs to watch out for that would indicate whether your family member is receiving appropriate attention. One of the biggest signs is pressure sores, also commonly referred to as bedsores or pressure ulcers. These are painful and life-threatening sores that develop when you are in the same position for a long period of time. Pressure sores generally appear on the boney areas of the body, such as the sacrum, heel, tailbone, back, elbows and ankles. These sores appear as the skin breaks down.

Pressure sores are categorized into four stages. During the first stage, the sore is not yet an open wound. There may be pain and reddening of the skin. By the time the sore has reached the fourth stage, it typically means that there is an open sore that has gone into the muscle and bone. Infection is a major complication associated with pressure sores. When a pressure sore is in an advanced stage and infection has reached the bone, there is usually a horrific odor that goes along with an infected pressure sore.

Diabetics are at a higher risk for developing pressure sores, generally ones that appear on the heels. People with poor circulation and those who are incontinent are also at a higher risk.

Since pressure sores are such a major problem for the elderly, don’t be shy about checking your loved one all over. If your loved one frequently lies in bed with his or her socks on and sheet pulled up, you need to make sure that you look at his or her feet and legs. Or if your mother or father is complaining about pain in an area of his or her body, you shouldn’t be afraid to look to ensure that a pressure sore has not developed. While you might feel like it is a dignity issue, to give your loved one privacy, you need to make sure the skin is intact. You can’t rely solely on the nursing staff, as they might not take the time to examine your family member for these
potentially life-threatening sores.

You need to be aggressive in trying to catch pressure sores before they get to the advanced stages. It is imperative that these sores are identified quickly to prevent severe illness and in some cases, death. Therefore, be proactive and act as an advocate for your family member. Pressure sores are avoidable, as long as the resident is being turned and repositioned regularly and is appropriately toileted.

**Malnutrition & Dehydration**

Getting people to eat or drink when they are recovering from a stroke or dealing with a medical condition can be a challenge. They might have trouble swallowing or experience a loss of appetite. You need to know what to look for to ensure that your loved one is getting the adequate nutrition and fluids.

There is a very simple test you can do to find out if your family member has the proper hydration. Simply pinch the arm. If the skin stands up, then there is a problem with hydration. If your loved one’s features look sunken or the skin is discolored, it could also mean the body is dehydrated.

Malnutrition is another serious issue you have to watch for. There should be weekly or monthly monitoring of the resident’s weight, but these weigh-ins are not always done making it difficult to identify weight loss. There are some things you can look for that could indicate your family member is not receiving the proper nutrition. If you come into the room and you repeatedly notice that the food tray is on the other side of the room and it’s cold or no one has moved the tray over for hours, it could be the sign of a problem.

Eating is a challenge for stroke patients, as they usually need a diet of softened food. If you notice that your loved one is being served a regular diet, when he or she should be given softened food, you need to be careful, because he or she may not be able to swallow regular food and could end up choking.

If you notice that the skin appears to be breaking down, it could be a signal of malnutrition. Protein is needed to assist in healing wounds.

Every facility should have a dietician on staff. We are not referring to the dietary manager, who is the person charged with running the food service. What we are talking about is a registered dietician who will work alongside the physician to ensure the resident is receiving the right amount of fluids and nutrition. The dietician is also the one who should speak up when there is a concern about an individual’s nutrition or hydration and order the appropriate tests to get a baseline evaluation.

If you have concerns about your loved one’s diet, you should speak with the dietician. Whether he or she is not getting meals or if there should be a no-salt diet, you need to complain to the dietician. Typically, the dietician will have his or her own office within the facility. Leave the dietician a message and then follow up with a phone call.

Don’t discount the possibility that your family member’s basic needs might not be met. If your father or mother had a stroke and can’t use the right hand, make sure the water pitcher is on the left. These are the kinds of things you need to be looking for, as the facility might not be addressing these simple issues.

**Red Flags of Abuse**

Up until this point, we have been talking about the type of care your loved one should be receiving and the signs to look for that would indicate that optimum care is not being provided. Sadly, neglect isn’t the only issue that plagues nursing homes and assisted living facilities. Abuse is also a major concern, which comes in the form of physical, mental and sexual abuse.

There are some red flags that would indicate someone is abusing your family member.

One of the first things you would want to look for is bruising. You may suddenly start receiving calls that your mother has been falling out of bed. While
these calls might have some truth to them, they could also be an indication that someone is hurting her. If there are bruises that cannot be explained or if the reasons don’t seem to fit, you need to be on alert that something is wrong.

Due to the nature of nursing homes, sometimes the abuse occurs from another resident. Many people living in these facilities suffer from dementia and other mental conditions. They might strike out at other residents and even focus on a particular person. There are also mentally ill patients who are frequently placed in nursing homes. They really have no business being in nursing homes, as they can present a real danger to others. We know of situations where mentally ill residents have stopped taking their medications and, as a result, committed horrible assaults and batteries on other residents.

While adults living in nursing homes do have the right to become friends and have sexual liaisons, you have to be very careful. You need to make sure that both parties are in full consent and that there isn’t an abusive situation. However, there can never be consent between an employee and a resident. That situation is taboo.

Nursing homes have the absolute responsibility to ensure that the people working in their facilities do not have criminal records. This falls under Resident Rights — that there is no one working in the facility who has a criminal history. If an employee has a record and commits abuse, the nursing home could be liable. Sexual abuse can be a trickier issue when it involves an employee, though. Someone might not have a criminal history, but it doesn’t mean he or she is not a sexual abuser. If there has been no indication that the employee was prone to sexual assault, an extensive investigation will need to be made to determine if this employee has committed sexual abuse in other facilities. However, despite the challenges of this situation, you would want pursue the nursing home if its employee sexually abused your loved one.

In the next chapter, we will be discussing the legal process involved when you suspect that something has gone wrong in the nursing home or assisted living facility.
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Why would an experienced, board certified personal injury attorney who handles lots of cases each year write a book that teaches people how to settle their own case without an attorney?

The answer is that you don’t have to be a rocket scientist to settle a small car accident case on your own. Each year hundreds of Virginia car accident victims contact one of our offices seeking help with their car accident claim. Despite the claims made in most lawyer ads many of the smaller claims can be handled by anyone who understands the process and is willing to do all of the work necessary.

The truth is that many of those lawyers ads which try to scare you into “Hiring me now because I can get you the most money for your case and every day you work you are hurting yourself” are deceptive. Lawyers know that they often cannot add anything to your small car accident case that you could not get from the insurance company on your own. Yet these same lawyers gladly take up to 40 percent of your settlement for their “help.”

This book is written to show you exactly how you can settle your own small car accident case. If you’re the kind of person who can handle your own taxes, file your own bills and file health insurance claims then you can take control of your own small accident claim and get a fair settlement from the insurance company.
There are a lot of attorneys out there and knowing which one is right for your case can be overwhelming. When you do a simple search on Google or one of the other search engines, you will be presented with pages and pages of lawyers in your area. The reality, though, is that in Virginia there are only a small handful of lawyers who are truly experts in nursing home and assisted living facility cases. It is up to you to do your research to determine which lawyer is going to provide the best possible representation.

*Let’s take a look at some ways to help you fine tune your attorney selection:*

1. **Start with an Internet search.** As we just mentioned, be prepared to find pages of attorney websites. When you visit each website, pay careful attention to the practice areas listed. If the attorney has 17 practice areas listed, chances are the attorney is not going to be a specialist.

2. **Call the attorney.** Before you even step foot into a law office, call the lawyer. Ask him or her for information about your case. During the conversation, find out if the attorney has written any books or reports regarding nursing home abuse. We have both authored numerous consumer guides that are meant to educate the public. Many good attorneys have done something similar. Finding out these details will help you pinpoint the level of expertise and experience the attorney possesses. It will also show you if you have the same goals as the lawyer, meaning that the case is about more than money. It is about preventing the abuse and neglect from happening to someone else.

When you are talking with an attorney, don’t be afraid to lay it all out on the table. There is also a magic bullet question that we would recommend that you ask any attorney whom you are considering for legal representation – “if I don’t hire you, will you provide me with the names of three to five other lawyers I should hire?” If you ask this question of numerous attorneys and the same names keep coming up, it should tell you something. Those lawyers are probably your best bet.

**What to Bring to Your Appointment**

Once you have selected an attorney, you need to be prepared for your appointment. If you have kept a diary or any type of notes regarding the case, bring it with you. A diary can be crucial when preparing a strong case. Copies of written complaints are extremely helpful when meeting with your lawyer, as well as any written correspondence that has occurred between you and someone working in the facility.

Many people will get copies of medical records before the appointment at the attorney’s office. This might not be necessary, though. Typically, attorneys
HOW TO CHOOSE THE RIGHT NURSING HOME FOR YOUR LOVED ONE

prefer to obtain the records themselves, because they know what to ask for. Also, if they are able to get a batch of medical records, it is often easier to determine if they are all there or not. The other issue with ordering medical records on your own is that the supervising nurse or director of nursing might be alerted to a potential problem. He or she could then go in and fill in any holes in the records.

You should be aware that records often cost money. Many facilities outsource the production of records. That means, more than likely, a third-party vendor will be the one supplying the records.

Some of the other things that are helpful to bring to the appointment include photographs, video and the death certificate, if applicable. If the person has passed away, one of the topics that will be discussed during the appointment with the attorney will have to do with the qualifications to represent the estate.

Components of a Good Case
There are some specific factors that separate the strong cases from the weak ones. While each case is unique, the components of good cases are generally the same. First and foremost, to succeed in court, you must have a family member who is obviously compassionate about the victim. The jury will look at the family and it definitely helps if there is great family representation. We are not talking about physical appearance. The jury will want to know how often the family member visited the resident and whether the entire family was involved. If you never went to visit your mother or father, it could be a problem in the eyes of the jury. They are going to size you up and ask themselves the following questions about you:

- Did you care for your loved one?
- Did you love your family member?
- Did you visit the nursing home often?
- Do you and your family seem to be fighting?

After you explain your situation to the attorney, he or she will likely want to look at what the records have to say. These are records from the facility, as well as medical records from the primary care physician and possibly hospital records. One of the areas that

Autopsies

We often receive phone calls from families who have lost loved ones and want to know if they should get an autopsy. If there is still time to get an autopsy, it may be an option that should be considered, especially if you feel very strongly that the cause of death was not typical.

One of the common reasons of death identified by autopsies is “Failure to Thrive,” meaning that the person just didn’t want to live anymore. Of course, that is a cause of death that would be very difficult to identify without an autopsy, as it is not as straightforward as a pressure sore that causes a sepsis infection.

Keep in mind that autopsies can be expensive and you may be looking at a cost of anywhere from $1,500 to $2,000. An autopsy is therefore an extreme measure to take after a loved one’s passing and can be a difficult decision for the family.
will be evaluated regarding your loved one’s case is whether there was a breach in the standard of care. For example, did your family member receive the type of treatment that would have been given by a reasonable health care provider, which might show that what has happened to your family member was just a bad result. Basically, your attorney will be looking at the entire story to determine if you have a very strong case.

Some of the other components of a good case involve situations where a person doesn’t have an underlying condition that could have led to the injury or medications gets mixed up. To sum it up, to win your case, the claim has to be something that can be proven.

Expert reviews are also important when it comes to determining if you have a strong case. According to the law, to win a case you need to find an expert who is basically in the same field as the defendant. This person must be willing to testify under oath that the health care provider was negligent or violated the standard of care, also known as malpractice. There has to be a clear link between the malpractice and the injury or death that occurred.

In a nursing home case, you could have anywhere from one to several experts. This can become very costly. These experts charge more than any attorneys we know. In some situations, you may be asked by the law firm to advance these expert fees. The majority of attorneys work on a contingency fee, meaning you don’t have to pay unless you win. However, these cases can become costly for the law firm, which is why you shouldn’t be surprised if you are asked to pay for some of the expenses.

A nursing home or assisted living facility case is not going to change what happened. All an attorney can do is to try to recover compensation for the family or the patient. What you have to consider before pursing a lawsuit is whether it is worth the cost. Grace explains to her clients that it is going to cost X amount of dollars to pursue the claim and the recovery might only be Y amount of dollars, after deducting the attorney fees, Medicare lien and/or Medicare reimbursement. This conversation is one you need to have up front with your attorney, so you know what you are getting yourself into.

**Arbitration v. Courtroom Trial**

Many facilities include arbitration provisions in their admission paperwork, which are designed to prevent you from going to court. According to these contracts, if you have a dispute, you will likely have to take it to the American Arbitration Board or some other similar entity.

Arbitration is different than a courtroom trial. Instead of having your case heard in front of a judge and jury, your case will be handled by an arbitrator. An arbitrator is a neutral third party who will listen to both sides of the argument and will make a decision.

Many families are unaware of what they are signing when placing their loved ones in facilities. When you make the decision to place your loved one in a facility, you are not thinking there will be an issue of abuse or neglect. What you must know is that if you sign an arbitration agreement, it is considered binding and will be upheld if the resident was the one who signed it. On the other hand, you can challenge the contract if a medically responsible party is the one who signed.

What’s unfortunate about these arbitration provisions is that people sometimes feel like they have no choice but to sign. There may be only one bed available in the entire region. In that scenario, you will sign just about anything.

There is hope if you or your family member signed an arbitration agreement. If your loved one just died or was moved from the facility due to neglect or abuse, or if the facility is known for using an arbitration provision in its contract, your attorney can send a letter opting out of arbitration.
Conclusion

Deciding on a nursing home or assisted living facility is not something you really want to think about. It is a tough decision that must involve the family. The majority of the public is not familiar with what qualifications and services to look for when selecting the institution that is most appropriate. What questions should be asked and what do you look for?

Throughout this book, we have shown you how to navigate through the overwhelming process of choosing a home. But that’s not all. After reading the chapters, you should feel empowered and equipped to tackle your situation head-on. While choosing a nursing home or assisted living facility is not an ideal scenario, you can take the necessary steps to protect your loved.

This book is meant to be your guide to nursing homes and assisted living facilities.

If you need further assistance or have questions, it is best to speak directly with a qualified attorney.

The elderly are often the most vulnerable in our society. Therefore, under the law, residents are granted certain rights. Among these include the right to privacy and dignity. The law also outlines that a plan of care must be created for each and every resident living in the facility.

Despite Resident Rights and your best efforts to select the best possible facility for your loved one, issues sometimes still arise. You may have a complaint about food, safety or even the cleanliness of the institution. It is crucial that you know who to complain to and how to follow up. When there are warning signs of abuse or neglect, you need to take immediate action, including hiring a lawyer.

Whenever you are faced with a legal matter, it is vital that you familiarize yourself with the process. You need to understand how abuse and neglect claims are handled, as well as how an attorney can help.

This book is meant to be your guide to nursing homes and assisted living facilities. If you need further assistance or have questions, it is best to speak directly with a qualified attorney.

For advice about your specific case, use the following information to contact us:

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TheVirginiaNursingHomeBook.com
703-591-9829
APPENDIX

Frequently Asked Questions

Is there a website I can use to research nursing homes?
There are many websites out there that offer information regarding nursing homes. One of the most informative websites to use to find details about facilities is Medicare.gov. Medicare conducts surveys on numerous facilities and the results are found on its website. By far, it is the most reliable resource.

Why is neglect so prevalent in nursing homes?
One of the reasons neglect is such a problem in nursing homes has to do with understaffing. Many facilities do not have the adequate staff to properly care for residents. And since the wages paid to nursing aides, who are responsible for the majority of care, are low, there is also an issue with employee turnover. With little staff to care for residents, many people find their calls for help ignored and their needs unmet.

When are physical restraints allowed?
In general, physical restraints are not permitted in nursing homes and other facilities. However, there are some exceptions. For example, if the resident is in danger of harming himself or herself, physical restraints may be used. A doctor’s consent must be given and the family should be informed of what is going on. It is important that the resident is sufficiently monitored and that the restraint is only used as needed.

What’s an Ombudsman?
An Ombudsman is basically an advocate for people residing in nursing homes and assisted living facilities, as well as their family members. Their focus is to ensure that the rights of residents are protected and to solve problems, including neglect. You can learn more by visiting the website, ElderRightsVA.org.

Can pressure sores be avoided?
Yes. Pressure sores can be prevented by keeping skin clean and dry and frequently re-positioning a resident. Pressure sores, also referred to as bedsores, often develop when a resident remains in the same position too long or suffers from a condition that makes him or her prone to this ailment. The nursing staff can take measures to avoid these painful sores.
Can a nursing home be held liable for resident-to-resident abuse?

Depending on the circumstance, the answer is “yes.” Residents should be protected from harm, which includes harm inflicted by other residents. When there is understaffing or other issues that cause neglect, it becomes very difficult to provide the appropriate level of safety to each and every resident. If your loved one has suffered from abuse by another resident, you should talk with an attorney.

What role does the family play in a nursing home lawsuit?

The family plays a major role in a nursing home lawsuit. One of the first things that the jury will look out in a nursing home case is the family. They want to know if the nursing home resident was loved and cared for by their family. That means they will be curious about who visited him or her in the home and who took an active interest in their loved one’s wellbeing. If a family is bickering or feuding, it doesn’t look good in the eyes of the jurors.

Do I need a lawyer to handle my nursing home abuse claim?

In most circumstances, you will want an attorney to help you. A qualified nursing home abuse lawyer will be able to educate you on what steps need to be taken, including locating another facility for your loved one. An attorney will also be with you throughout the entire process, guiding you through the complex legal system.

Think about it.
You can’t compare one lawyer to another by the ads, can you? Most of them just brag about being “aggressive,” as though that’s something unique.

That’s why Ben wrote
THE TRUTH ABOUT LAWYER ADVERTISING:
The Complete Consumer Guide to Finding the Right Lawyer for Your Case—All the Time.

Get your free download now at TheTruthAboutLawyerAds.com
Or call 877.540.8618 to have a copy mailed to you.
Ben Glass serves on the board of Love Without Boundaries, a non-profit organization dedicated to saving the lives of orphaned and impoverished children in China. LWB's vision is to provide the most loving and compassionate help possible to these children, and to show the world that every child, regardless of his or her needs, deserves to experience love and be treated with dignity and care. As a Board Member, Ben has the privilege of “meeting” children every day who benefit from LWB’s programs. He is always humbled by the hurdles they have overcome in their short lives.

Ben would like to invite you to become a part of these children’s stories. By making a donation to help change their lives, you can make a positive difference in the world.

For more information on any of their programs, please visit www.LoveWithoutBoundaries.com or email them at info@lwbmail.com.

Donations can be made online or mailed to
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LWB is a registered 501(c)(3) charity. 100% of your charitable contributions are tax deductible in the U.S.

On behalf of all of the children in LWB programs—Ben sends his deepest thanks for your kindness and commitment toward helping those in need.
A Family’s Guide to Choosing the Right Virginia Nursing Home for Your Loved One

About Ben Glass
Ben is a medical malpractice attorney in Virginia and has represented victims and their families since 1983. He is well known in his industry as a premier expert. Ben has authored many books and consumer guides including, *Five Deadly Sins That Can Wreck Your Injury Claim*, *Buying Car Insurance: The Ultimate Guide to Protecting Your Family From Irresponsible Drivers in Virginia*, *The Truth About Lawyer Advertising* and *Why Most Medical Malpractice Victims Will Never Recover a Dime.*

Ben is a member of the D.C. Trial Lawyers Association and the American Association for Justice. He has frequently lectured continuing education courses on such topics as medical malpractice, medical experts, proving damages and much more.

About Grace Carroll
Grace has represented families with nursing home and neglect claims for nearly twelve years in Virginia. She is viewed as one of the top experts in these types of claims. Grace brings a unique perspective to nursing home and assisted living cases, as she once represented insurance companies and knows how the other side handles claims.

In addition, Grace is able to draw on her former experience as a prosecutor.

She graduated from George Mason University School of Law and was appointed as the Fairfax County General District Courts Substitute Judge. Grace is a member of the Maryland State Bar Association Inc., Virginia Women Attorneys Association, Virginia Trial Lawyers Association and the American Association for Justice.