

HOW TO CHOOSE THE RIGHT NURSING HOME



PRESENTED BY

Becker
Law Office
A subsidiary of Bubalo Law PLC



Becker

Law Office

A subsidiary of Bubalo Law PLC

TABLE OF
CONTENTS



Chapter 1: How to Use This Guide.....4

Chapter 2: Choosing the Right Kentucky Nursing Home.....6

Chapter 3: Choosing the Right Type of Long-Term Care for a Loved One.....11

Chapter 4: Checklist: Choosing the Right Nursing Home for Your Loved One.....15

Chapter 5: Rating Nursing Homes.....19

Chapter 6: Your Loved One’s Rights as a Nursing Home Resident.....24

Chapter 7: What Is Nursing Home Neglect & Abuse?.....27

Chapter 8: Common Causes of Nursing Home Neglect & Abuse.....33

Chapter 9: Nursing Home Neglect & Abuse Investigation in Kentucky.....36

Chapter 10: Kentucky Adult Abuse Registry.....39

Chapter 11: How a Lawsuit Can Prevent Nursing Home Neglect and Abuse.....42

Chapter 12: Introduction to Becker Law Office.....46



—
Ideally, every family would plan ahead for long-term care after careful research and deliberation.



CHAPTER 1: HOW TO USE THIS GUIDE

If you're trying to decide on a nursing home for a loved one, it's important to ask the right questions and make an informed decision. Ideally, every family would plan for long-term care after careful research and deliberation. Yet many families find themselves having to make a quick decision after a loved one's sudden health crisis or other life-changing events. Even so, a quick decision can still be a fact-based decision.

This book can help you evaluate the nursing home and long-term care facilities you are considering. You may find it helpful to refer to the checklist in chapter 4 and take it with you when you visit.

We wish you and your family the peace of mind that a well-informed decision brings as you seek to provide the best care for your loved one.

CHAPTER 2: CHOOSING THE RIGHT KENTUCKY NURSING HOME

The decision to place a loved one in the care of a nursing home facility is one that many Kentucky families eventually face. According to a Facts and Figures report published by the Alzheimer's Association in 2019,¹ 73,000 of the 5.8 million Americans who have the condition are Kentucky residents. Once you've decided a nursing home is the best option for an aging parent or loved one, the next decision is selecting the best facility to fit his or her needs.

¹ <https://www.alz.org>



Many families are initially overwhelmed by the choices and financial decisions associated with the process. In fact, the daily needs of nursing home patients vary considerably.

Throughout America, roughly 48%² of nursing home residents have Alzheimer's or another form of dementia, although many maintain a high degree of independence. It's normal to have many questions about the right facility to choose.

Consider the Patient's Needs

The Kentucky Association of Health Care Facilities (KAHCF) states: "The goal of care in a nursing facility is to help individuals meet their daily physical, social, medical, and psychological needs and to return home whenever possible."³ Thus, the KAHCF recommends researching nursing home options based on patient needs. The National Institute on Aging (NIA) recognizes different types of long-term care based on the needs of the patients, including (1) Board and Care Homes; (2) Assisted Living Facilities; (3) Skilled Nursing Facilities (which provide a broad range of health, medical, and other needs aiding in everyday living); and, (4) Continuing Care Retirement Communities (CCRCs).⁴ Long-term care may be needed for the young and older individuals, depending on the circumstances. The type of facility you should choose depends directly on the type and severity of the disability your loved one may be experiencing. For instance, Board and Care facilities probably will not have the degree of medical care that a Skilled Nursing Facility will have.

² Centers for Disease Control and Prevention, National Center for Health Statistics, www.cdc.gov

³ www.kahcf.org

⁴ www.nia.nih.gov

Many long-term care facilities provide memory units for patients with dementia or Alzheimer’s disease. The KAHCF recognizes that facilities should provide care to fulfill four basic needs to patients who require long-term care:

- **Medical care:** Physicians are responsible for a care home’s overall plan of care and for evaluating residents’ acute medical conditions. An elder in poor health may benefit from a nursing home that employs more on-site physicians.
- **Nursing and rehabilitative care:** Nurses perform both administrative and clinical nursing home tasks, and are at the front line of resident care. Not surprisingly, research shows that nursing homes with high nurse-to-resident staffing ratios provide better care. Rehabilitative services include help in recovering from acute events (such as strokes and heart attacks), physical therapy for orthopedic incidents (such as hip or knee replacements), and speech, occupational, and other rehabilitative therapy.
- **Personal care:** If a loved one needs help with day-to-day activities, high staffing ratios at a facility are even more important.
- **Residential care:** High-quality nursing homes provide a variety of activities to meet residents’ physical, social, and spiritual needs.

The National Institute on Aging suggests starting your search through the Eldercare Locator at 1-800-677-1116 or by visiting <https://eldercare.acl.gov>.⁵ Other sources include the following:

CENTERS FOR MEDICARE
& MEDICAID SERVICES
1-800-633-4227 (toll-free)
1-877-486-2048 (toll-free)
www.medicare.gov

NATIONAL ASSOCIATION
OF AREA AGENCIES
ON AGING
1-202-872-0888
info@n4a.org
www.n4a.org

ELDERCARE
LOCATOR
1-800-677-1116 (toll-free)
eldercare.acl.gov

We have found these resources valuable:

- Find the Nursing Home Compare tool by clicking on the Government Nursing Home Report on the Becker Law website.⁶ Search nursing homes by name, ZIP code, city, or state.
- *U.S. News and World Report* compiles an annual list of Best Nursing Homes. Search Kentucky nursing homes in “Best Nursing Homes” at the U.S. News website.⁷
- You can find general resources on the Department of Health and Human Services’ website, LongTermCare.gov.⁸

See Chapter 3 for more helpful guides. Online research is a good starting point in your search for the ideal long-term care facility.

⁵ www.nia.nih.gov
⁶ Find the Nursing Home Compare tool by visiting beckerlaw.com/kentucky-nursing-home-abuse-lawyer/
⁷ <https://health.usnews.com/best-nursing-homes>
⁸ <https://longtermcare.acl.gov/>

Do the Legwork of an In-Person Visit

There is no substitute for in-person visits. Get the most out of your visit by keeping in mind:

- **Location:** The facility should allow for regular visits from family and friends, who are a patient's best advocate and support system.
- **Atmosphere:** First impressions matter. Facilities should be welcoming, attractive, clean, and free from unpleasant odors.
- **Staff:** It's not just staffing levels that matter. Pay close attention to whether staff treat residents with a positive attitude and respect. Observe how staff interact with each other.
- **Dining:** Sit down for a meal or two with the residents to check the quality and preparation of the meals.
- **Tour:** Tour the entire facility, not just what they want to show you. If you can make a second visit, show up unannounced at mealtime, when activity is often at its peak.
- **Ask about security measures:** What's to stop a patient with dementia or a patient in the memory care unit from wandering off-site? Do exit doors have alarms? How good is overnight security?

These are just a few of the many points you should bear in mind when evaluating potential nursing homes. Costs, licensure and certification, patient rights, and many other factors may also influence your final decision. See Chapter 4 for a handy checklist of things you might forget.

For More Information:

- AARP: Choosing the Right Nursing Home, <https://www.aarp.org/home-garden/housing/info-03-2012/safe-nursing-home-questions-to-ask.html>
- Finding Long-Term Care for a Person with Alzheimer's: National Institute on Aging ("NIA"), <https://www.nia.nih.gov/health/finding-long-term-care-person-alzheimers>
- Choosing a Skilled Nursing Home Facility: National Institute on Aging ("NIA"), <https://www.nia.nih.gov/health/choosing-nursing-home>
- Families for Better Care: State Report Cards - Kentucky, <https://familiesforbettercare.com/index.php/report-cards/details/ky>



CHAPTER 3: CHOOSING THE RIGHT TYPE OF LONG-TERM CARE FOR A LOVED ONE

When a parent or loved one reaches the point when they can no longer care for themselves at home, whether because of illness or age, the feelings related to moving them can be overwhelming. It may mean they have to be separated from a home they've lived in for decades. It may mean they've just lost a spouse and no longer feel comfortable living alone. Or it may mean that, for their own safety, they need more care or supervision. It's normal to feel stress during this period of transition, but that shouldn't keep you from making informed decisions. With that in mind, it is important to be aware of the types of care available for your elderly loved ones.

Independent Living Communities or Board and Care Homes

These facilities provide fully equipped, private apartments for seniors who are still independent and don't suffer from many medical problems. Apartments can range in size from studios to two-bedroom units, and dining services are usually available with meal packages to suit the residents' needs. Residents may be able to pay for a certain number of meals each day. Because seniors staying in these types of facilities remain active, social activities and events are commonly provided. Independent living facilities are also known as "retirement communities," "congregate care," "retirement villages," "55+ communities," "senior apartments," or "continuing care retirement communities."

Assisted Living

Assisted living facilities are for seniors who can no longer live by themselves safely but don't need the extensive care that nursing homes provide. They receive daily routine help with medications, daily living activities, meals, and housekeeping. Seniors may live in private apartments, typically with a limited kitchen area, and they can be provided with three meals daily in a main dining area. For extra safety, staff is available 24/7 in case of falls or other emergencies. Licensed nurses are often provided to attend to the medical needs of residents. Because residents still maintain some independence, social activities and transportation are likely to be available.

Some assisted living communities provide a special memory care unit for residents with Alzheimer's or other (perhaps less severe) forms of dementia. Units are typically secure to prevent patients from wandering away. Make sure memory care is available if your loved one needs that service. These facilities also are known as "assisted care communities" and "personal care homes."

Skilled Nursing Facilities

These facilities provide 24/7 skilled nursing care for seniors who need a high level of medical care and help. Licensed nurses provide care, because most long-term residents in nursing homes suffer from complex medical problems that require close attention and ongoing nursing services. Many nursing homes now also offer short-term rehabilitation services for people recovering from injuries, sickness, and surgical procedures, regardless of age. Often, residents share a room and eat meals in a dining area, though they can be fed in their rooms if they are extremely ill. Nursing homes may also be known as "convalescent care facilities," "nursing centers," "skilled nursing centers," and "long-term care facilities."

Memory Assistance Care

Also known as "Alzheimer's care" or "dementia care," these senior living facilities offer an option for memory-impaired seniors. One of their most important services is offering 24-hour support and structured activities that provide residents with a higher quality of life and the safety they need to avoid injuries. These housing options can relieve family members of the burden of caring for memory-impaired parents at home and provide around-the-clock skilled personnel for this often-difficult task. Alzheimer's or dementia care also can be provided in assisted living communities, in addition to nursing homes and personal care homes.

Residents typically live in semi-private apartments, and trained staff set up daily activities to give residents structure in their lives. The living areas are secured to keep residents from wandering away, but outdoor walking paths and gardens are often available within confined areas to provide time outdoors.



Residential Care Homes

These private homes usually offer live-in caretakers who provide daily services to residents who want to stay in a private, home-like community. The caretakers typically offer help with daily living, including taking baths and getting dressed. But the amenities and nursing services usually differ between residential care homes, so make sure you ask specific questions when you visit. These are also sometimes referred to as “board and care homes,” “group homes,” and “adult family homes.”

CHAPTER 4: CHECKLIST: CHOOSING THE RIGHT NURSING HOME FOR YOUR LOVED ONE

All nursing homes in Kentucky must provide certain basic services to residents. Some facilities offer additional services and amenities that enhance a resident's stay and quality of life. As you research nursing home care for your loved one, it's a good idea to visit each prospective long-term care facility more than once, ask questions, and compare the facilities' services and amenities side by side. Does the nursing home's services match your needs?

To help you compare apples to apples, we’ve compiled a list of questions based on years of experience helping families who have placed loved ones in nursing homes and long-term care facilities. You can refer to this checklist and take it with you as you visit each facility. A well-run facility should welcome your questions.

Living Arrangements

- ☐ Is a bed available now? If not, how long is the waiting list?
- ☐ Is there a choice of room sizes and styles?
- ☐ Is there an entry fee? If so, is it refundable?
- ☐ Does the facility offer different levels of care?
- ☐ Is my loved one guaranteed a place for life?
- ☐ Does the facility appear clean and free of odor? Are housekeeping staffers present?
- ☐ What services are covered by daily room and board?
- ☐ Is the rate all-inclusive, or are there separate charges for certain services?
- ☐ Can residents provide their own furnishings?
- ☐ Does the monthly fee include telephone, cable TV, Wi-Fi, and utility costs?
- ☐ Is the facility secure? Is the staff on duty 24/7?
- ☐ What precautions are in place to keep residents with dementia from wandering on- or off-site?
- ☐ Is the facility locked at night?
- ☐ Do the rooms have emergency call systems?
- ☐ Does the nursing home have smoke detectors and a fire protection sprinkler system?
- ☐ Will the facility give you a copy of the most recent state inspection report? Ask to review the most recent state inspection report when you visit a facility. Inspection reports identify whether a nursing home has complied with minimum standards.
- ☐ Does the facility offer different levels of care, either on-site or on a nearby campus? (If not, your loved one may have to relocate to a completely different facility for a higher level of care.)

Medical Care

- ☐ Is a medical assessment required for admission?
- ☐ What medical services are covered in the basic room and board charge?
- ☐ Is there an extra charge for a staff member to see that residents take their medications on schedule?
- ☐ How often do physicians see residents?
- ☐ Can my loved one’s physician continue to provide treatment after admission?
- ☐ Are medical specialists such as eye doctors and dentists available to see patients regularly?
- ☐ Who will help arrange transportation for office appointments with a personal physician?
- ☐ What is the ratio of nurses to residents? How does that ratio compare to the Kentucky minimum standard of one licensed staff member for every 60 occupied beds?
- ☐ Does the nursing home post information about the number of certified nursing assistants?
- ☐ What types of therapy services are available at the facility? (Physical, occupational, and speech therapy are the three most common types offered.) Are they on- or off-site?
- ☐ Does the nursing home have a memory care unit for residents with Alzheimer’s disease?
- ☐ How does the nursing home handle medical emergencies? How close is the nearest admitting hospital?

Food and Dining

- ☐ Must residents come to the dining room for meals?
- ☐ Is the dining area comfortable and inviting? Can guests join residents in the dining room for meals?
- ☐ Can residents choose food for each meal? Are snacks available upon request?
- ☐ Does the facility have a registered dietitian who plans the meals? Is the food tasty and nutritious?
- ☐ Can the nursing home meet the needs of residents with special dietary needs, such as low-salt diets or sugar-free diets?
- ☐ Is there a separate room available for family events like birthday parties?

Activities

- ☐ Is there a published schedule of weekly activities for residents?
- ☐ Does the nursing home have an activities director?
- ☐ Do residents actively participate in activities? Are they urged to join in?
- ☐ Does the nursing home offer religious services?
- ☐ Does the facility have a designated recreation area?
- ☐ Does the nursing home have a volunteer group that helps with activities?
- ☐ Does the facility have a family council or resident council to offer input on care?
- ☐ Is transportation provided to outside activities?
- ☐ Is there a beauty/barbershop on-site? What services are available, and are there fees?
- ☐ Are there outside areas for residents to get fresh air and sunshine? How are they kept secure?

CHAPTER 5: RATING NURSING HOMES

Families place an aging loved one in a nursing home expecting that a long-term care facility will provide the best possible care. While it's a good idea to visit a nursing home when choosing a residence for your loved one, objective measures can also make it easier to compare facilities.



Obviously, nursing homes vary in the quality of care and the services they provide. Consumers can compare nursing homes certified by the Centers for Medicare & Medicaid Services (CMS) through star ratings assigned by the government.⁹ In addition, you can find the Nursing Home Compare tool in the Government Nursing Home Report on the Becker Law website.¹⁰ The tool provides an overall rating ranging from one star (far below average) to five stars (far above average) based on three criteria:

- **Health inspections by state agencies** – the only source of objective information from trained inspectors
- **Staffing** – the number of staff compared to residents, and how many of the staff are trained nurses
- **Quality measures** – how well each nursing home performs on each aspect of care

An overall rating is given for each facility, as well as a rating for health inspections, staffing, and quality measures. You can find a Kentucky nursing home by ZIP code, by city, or by name. To qualify for federal funding (which provides the lion’s share of nursing home care income), facilities must submit to inspections by CMS. Trained state inspectors in Kentucky conduct health and fire safety investigations in nursing homes as part of an agreement between the states and the federal government. The inspection process evaluates all major aspects of care in a nursing home. The inspections also identify safety requirement deficiencies, such as protection from fire hazards.

To qualify for federal funding (which provides the lion’s share of nursing home care income), facilities must submit to inspections by the Centers for Medicare & Medicaid Services.

⁹ CMS, <https://www.cms.gov>
¹⁰ Becker Law Office, <https://beckerlaw.com/kentucky-nursing-home-abuse-lawyer>

Surveys by safety inspectors normally take place annually and look at quality measures that include the percent of residents:

- Who self-report pain
- Who have bed sores or urinary tract infections
- Experiencing one or more falls with injury
- Who are given seasonal vaccinations
- Whose need for help with daily living activities has increased

When an inspector finds that a nursing home doesn’t meet a specific standard, the inspector issues the nursing home a deficiency citation. Every nursing home that cares for residents receiving Medicare and Medicaid must make the results of its last full inspection available for the public to review. You can ask to review the inspection report when you visit a facility. Inspection reports reveal whether a nursing home has complied with minimum standards. To view survey inspection findings for nursing homes in Kentucky, visit the Kentucky Cabinet for Health and Family Services website and go to 2018 Nursing Home Survey Inspection Findings.¹¹

How Many Deficiencies Are Too Many?

Whether you’re comparing prospective Kentucky nursing homes or assessing the quality of care at a nursing home where your loved one resides, you may notice that a nursing home has received deficiencies in a recent inspection. You should understand that deficiencies are not unusual. According to the Kaiser Family Foundation, deficiencies in nursing homes are fairly common: In 2017, the national average was 7.1 deficiencies per nursing home facility.¹² The average in Kentucky was 4.6. Out of the 284 Kentucky nursing homes, 43% have a “much below average” or “below average” rating. This makes Kentucky’s overall rating a “C” for 2019, which remains unchanged from the previous report (although this is much better than

¹¹ chfs.ky.gov
¹² www.kff.org

Indiana, which has an overall rating of “F”).¹³ The important point behind this finding is that, **if you just picked a nursing home at random in Kentucky during 2018, you would have a 43% chance of choosing a “much below average” or “below average” facility.**

Furthermore, a recent article in the *Louisville Courier-Journal*¹⁴ sheds light on a string of Kentucky nursing homes in Louisville that have had a consistently negative record of mistreatment and sub-par care. This includes unattended and unlocked medication carts and expired food or unregulated walk-in freezers. Even more flagrant, a resident who had suffered burns was left without help to shower or change his dressings, despite his inability to handle those tasks alone. This maltreatment extends beyond Louisville and seems emblematic of an issue that is systemic throughout Kentucky.

Long-Term Care Ombudsman Complaints

Ombudsmen advocate for residents of nursing homes and other care homes. They investigate and resolve complaints made by or on behalf of residents. Kentucky has more than 100 ombudsmen operating in all of the state’s 120 counties.¹⁵

The most common Kentucky ombudsman complaints in 2017 were related to:

- Resident care (2,154 complaints)
- Quality of life (1,666 complaints)
- Residents’ rights (1,891 complaints)

Unfortunately, ombudsman complaint data is not available for individual facilities, but you may be able to find out more by contacting your local Kentucky long-term care ombudsman.¹⁶

¹³ www.familiesforbettercare.com

¹⁴ Kobin, Billy “Federal report: ‘Poor care’ persists at 2 local nursing homes”. *Courier Journal* (Louisville) June 4, 2019, p. A1.

¹⁵ Nursing Home Ombudsmen Agency of the Bluegrass, www.ombuddy.org/

¹⁶ Kentucky Cabinet for Health and Family Services, www.chfs.ky.gov

Resources are also available at the following:

National Long-Term Care Ombudsman Resource Center website, <https://chfs.ky.gov/agencies/dail/Pages/ltcomb.aspx>
2018 Kentucky Elder Abuse Annual Report, <http://beckerlaw.com/wp-content/uploads/2019/09/2018elderabusereport.pdf>
Kentucky state profile at the Administration on Aging website, <https://acl.gov/about-acl/administration-aging>

For More Information:

Centers for Medicare and Medicaid Services:

- Special Focus Facility Initiative, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/sfflist.pdf>
- Nursing Home Data Compendium - 2015 Edition Quality Measures, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium_508-2015.pdf

Administration on Aging:

- National Ombudsman Reporting System - Aging Integrated Database, <https://agid.acl.gov/DataGlance/NORS/Trend.aspx?geoids=19&jvar=937&mode=Count&agegroup=0&sex=0&pop=0&service=0&poverty=0&adl=0&iadl=0>
- Families for Better Care: States Report Cards - Kentucky, <https://familiesforbettercare.com/index.php/report-cards/details/ky>



CHAPTER 6: YOUR LOVED ONE'S RIGHTS AS A NURSING HOME RESIDENT

Nursing home residents in Kentucky have certain important legal rights – including the right to care and services that enhance their quality of life and well-being. Residents should not decline in health as a result of the treatment they receive at a long-term care facility. The Rights (established by the 1987 Nursing Home Reform Act) emphasize the importance of treatment with dignity and residents' involvement in decisions about their care to the extent possible.

The Nursing Home Residents' Bill of Rights is part of the Nursing Home Reform Act passed by Congress in 1987. Kentucky has incorporated the Nursing Home Reform Act Residents' Rights into state statute KRS §§216.515 to 216.525. In accordance with Kentucky and United States law, residents and their responsible guardians have the right:¹⁷

- To be informed in writing before admission of all services available at the facility
- To be informed in writing before admission and quarterly after admission of all service charges for which the resident will be financially responsible
- To file complaints with appropriate agencies
- To recommend changes in policies and services and express grievances to outside representatives of their own choosing
- To participate in their own care
- To choose their own physician
- To have medical and personal records kept confidential
- To be free of physical and chemical restraints, except in emergencies or as justified by a doctor for a limited period
- To be free of mental and physical abuse
- To associate privately with people of their own choice and to send and receive personal mail unopened
- To choose whether to participate in social and religious activities
- To manage their personal funds and receive a quarterly statement accounting for the funds and any expenditures from their account
- To have privacy in bathrooms and visual privacy in multi-bedrooms
- To remain in the nursing home unless notified in advance of a discharge or transfer

It's important to be familiar with the Residents' Rights when you are selecting a nursing home and when you visit your loved one in a facility. You can observe generally whether the management and staff at a prospective facility appear to be caring for residents in accordance with their rights. Are the residents being treated with respect and dignity?

¹⁷ www.aarp.org



More than 30 years after the Nursing Home Reform Act became law, there is still much room for improvement in resident care. A recent report by the non-profit Families for Better Care uncovered deficiencies in 81.29% of nursing homes, while 94.75% have had complaints.¹⁸ Many deficiencies are minor and easily corrected. Some deficiencies can result in harm to residents.

The protections afforded in the Nursing Home Residents’ Bill of Rights are legally enforceable. Nursing homes that fail to respect the rights of residents and act negligently can be held liable. You and a loved one have the right to take legal action against a nursing home that provides negligent care.

The Bill of Rights also includes failure by a caregiver to satisfy the elder’s basic needs or protect him or her from harm.

For More Information:

- AARP: The 1987 Nursing Home Reform Act, https://www.aarp.org/home-garden/livable-communities/info-2001/the_1987_nursing_home_reform_act.html
- Families for Better Care: State Report Cards - Kentucky, <https://familiesforbettercare.com/>
- Kentucky Cabinet for Health and Family Services: Residents in Kentucky Long-Term Care Facilities, <https://chfs.ky.gov/agencies/os/oig/dhc/Documents/StateResidentsRightsPoster.pdf>
- The National Long-Term Care Ombudsman Resource Center: Residents’ Rights, <https://ltcombudsman.org/issues/residents-rights>

CHAPTER 7:
**WHAT IS NURSING HOME
NEGLECT & ABUSE?**

The National Center on Elder Abuse (NCEA) defines elder abuse as follows:
“Elder abuse is the mistreatment or harming of an older person. It can include physical, emotional, or sexual abuse, along with neglect and financial exploitation. Many social factors—for example, a lack of support services and community resources—can make conditions ripe for elder abuse. Ageism (biases against or stereotypes about older people that keep them from being fully a part of their community) also play a role in enabling elder abuse.”¹⁹

¹⁹ <https://ncea.acl.gov/NCEA/media/docs/Red-Flags-of-Elder-Abuse-English.pdf>

¹⁸ <https://familiesforbettercare.com/index.php/report-cards/details/ky>



It is important to learn the signs of mistreatment and neglect in order to choose the right nursing home for your loved one.

The seven major categories of abuse recognized by the National Center of Elder Abuse (NCEA) and other elder advocates are:²⁰

- **Neglect:** “Neglect is defined as the refusal or failure to fulfill any part of a person’s obligations or duties to an elder.”²¹
- **Physical abuse:** “Physical abuse is defined as the use of physical force that may result in bodily injury, physical pain, or impairment.”
- **Emotional or Psychological abuse:** “Emotional or psychological abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts.”
- **Abandonment:** “Abandonment is defined as the desertion of an elderly person by an individual who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder.”
- **Sexual abuse:** “Sexual abuse is defined as non-consensual sexual contact of any kind with an elderly person.”
- **Financial or material exploitation:** “Financial or material exploitation is defined as the illegal or improper use of an elder’s funds, property, or assets.”
- **Self-neglect:** “Self-neglect is characterized as the behavior of an elderly person that threatens his/her own health or safety.”

²⁰ <https://ncea.acl.gov/Suspect-Abuse/Abuse-Types.aspx>

²¹ Becker Law Office, Source: <http://beckerlawdev.staging.wpengine.com/kentucky-nursing-home-abuse-lawyer/neglect>

A recent example of neglect appeared in an article in the Louisville Courier Journal about a lawsuit, filed by our firms in 2019:²² “Craig Mixon, who entered Landmark in August 2018 and remains a resident there, suffered from pressure sores, malnutrition, medication errors, and a below-the-knee amputation of his right leg.” For a copy of the Complaint filed by us in that case, contact our office.

Neglect can come from many sources and unfortunately, oftentimes occurs due to understaffing by nursing homes. Fortunately, however, the *Lexington Herald-Leader* reported in February 2019 that State Senator Tom Buford is looking to pass a bill in the Kentucky Senate that would create a new system for the Kentucky Cabinet for Health and Family Services. Essentially, this bill mandates minimum staff-to-resident ratios in long-term care facilities, to minimize the types of abuse listed above. If passed, Senate Bill 206 will be effective in June of 2020.²³

According to statistics gathered by the National Center for Victims of Crime, physical abuse is the most commonly reported type of abuse in nursing homes. It accounts for 27% of cases, followed by resident-to-resident abuse (22%), psychological abuse (19%), gross neglect (15%), sexual abuse (8%), and financial exploitation (8%).²⁴

Red Flags of Nursing Home Neglect and Abuse

While some elders may lack the cognitive ability to report abuse, others feel shame about reporting mistreatment, particularly sexual abuse. It’s important for family members of nursing home residents to be alert to the signs of mistreatment and abuse, and know how to recognize them.

²² Loosemore, Bailey, Nursing home hit with string of violations and lawsuits, Courier-Journal (Louisville), September 22, 2019.

²³ Cheves, John, “He wants more care staff in Kentucky nursing homes, which are among the nation’s worst,” *Herald-Leader* (Lexington), February 20, 2019.

²⁴ Nursing Home Abuse Justice, Source: <https://www.nursinghomeabuse.org>



The NCEA calls the following warning signs Red Flags:

Physical abuse

- Unexplained or frequent bruises, burns, black eyes, broken bones, or other injuries
- Grip marks on the arms or neck
- Dismissive attitude about injuries
- Appears sleepy or sedated
- Confined to a bed, chair, or room

Sexual abuse

- Unexplained genital bleeding
- Bruised breasts or buttocks
- Torn, stained, or bloody undergarments
- Evidence of unexplained sexually transmitted disease
- Acts upset when bathed or changed

Emotional or Psychological abuse

- Appears isolated, withdrawn, depressed, or non-communicative
- Dramatic swings in mood or behavior
- Lack of eye contact
- Confusion or disorientation
- Resident not permitted by a caregiver to speak for him- or herself

Financial exploitation

- Large bank account withdrawals or ATM activity not consistent with financial history
- Sudden, unexplained transfer of assets
- Disappearance of valuables
- Names added to an elder’s bank card
- Evidence of an elder’s signature being forged on checks, titles, and other financial documents

Neglect

- Malnutrition or dehydration
- Lack of basic personal hygiene
- Untreated medical problems or lack of medical aids
- Bedsores, sometimes referred to as “pressure sores”
- Unclean living conditions

Reporting Elder Abuse

Kentucky is a mandatory reporting state. If you suspect that a loved one is being abused, neglected, or exploited, you should report the situation to local Adult Protective Services (APS).²⁵

²⁵ Kentucky Cabinet for Health and Family Services: <https://prdweb.chfs.ky.gov/ReportAbuse/>

During 2015 alone, Kentucky APS received 30,037 reports for the population aged 60-plus that met criteria for abuse and neglect, while 12,618 reports criteria to be investigated. Over this period, 1,811 abuse and neglect cases (approximately 23%) were substantiated.²⁶ You can report elder mistreatment to:

- Adult Protective Services (877-597-2331)
- Office of the Inspector General (502-564-2888)
- Office of the Attorney General (877-228-7384)
- Long-Term Care Ombudsman (800-372-2991)
- Your local police department, sheriff’s department, or Kentucky state police
- The nursing home facility administrator, director of nursing, or other management staff

You can also speak to a knowledgeable lawyer who helps families who are trying to protect a loved one from neglect or abuse in a nursing home. An attorney at Becker Law Office can review your situation and work with you to ensure that your loved one is receiving the dignified care that he or she deserves.

For More Information:

- Cabinet for Health and Family Services: Elder Abuse Annual Report - Signs of Abuse: <https://prdweb.chfs.ky.gov/ReportAbuse/>
- National Center on Elder Abuse: Abuse of Residents of Long-Term Care Facilities; [https://ncea.acl.gov/NCEA/media/docs/Abuse-of-Residents-of-Long-Term-Care-Facilities-\(2012\)_1.pdf](https://ncea.acl.gov/NCEA/media/docs/Abuse-of-Residents-of-Long-Term-Care-Facilities-(2012)_1.pdf)
- Types of Abuse, [https://ncea.acl.gov/NCEA/media/docs/Abuse-of-Residents-of-Long-Term-Care-Facilities-\(2012\)_1.pdf](https://ncea.acl.gov/NCEA/media/docs/Abuse-of-Residents-of-Long-Term-Care-Facilities-(2012)_1.pdf)
- American Psychological Association: Elder Abuse and Neglect- Cues that may Signal Elder Abuse, <https://www.apa.org/pi/aging/resources/guides/elder-abuse>
- Commonwealth of Kentucky, Office of the Attorney General: How to Protect Nursing Home Residents, <https://ag.ky.gov/publications/AG%20Publications/Protect-Nursing-Home-Residents.pdf>

²⁶ 2015 Kentucky Elder Abuse Annual Report, Cabinet for Health and Family Services Department for Community Based Services



CHAPTER 8: COMMON CAUSES OF NURSING HOME NEGLECT & ABUSE

Certain factors increase the potential for neglect or abuse of residents in a nursing home. The National Center on Elder Abuse recognizes three major types of risk factors: facility, resident, and relationship factors. The National Association of State Units on Aging²⁷ provides helpful information:

²⁷ www.aaaceus.com

Nursing Home Risk Factors

- **Management:** Nursing home culture starts at the top. Strong leadership by directors and administrators who are in touch with daily nursing home life is a predictor of quality care. The facility should have a policy in place for recognizing and reporting abuse (to management and to state authorities).
- **Staff training:** Nursing home staff should undergo continual training to improve skills such as conflict resolution, empathy, and abuse recognition.
- **Staff screening:** All staff members should pass a screening to determine their eligibility to care for elderly residents. This can include criminal background checks, reference follow-ups, and interviews.
- **Inadequate staff:** Numerous studies have demonstrated a link between low staff levels and poor resident care. A high staff turnover rate can also be a red flag.
- **Staff stress:** Nursing home work can be stressful, and burnout can lead to abuse. Specific risk factors include low pay, too much work caused by understaffing, and lack of supervisor support.
- **History of abuse and deficiencies:** Nursing homes with a history of abuse, resident complaints, and licensure problems are more likely to be deficient.
- **Home conditions:** A nursing home’s location and its design play a role in resident safety. Overcrowded and outdated buildings are of particular concern.

Resident-Visitor Risk Factors

Patients with dementia, Alzheimer’s, and other conditions that affect their behavior and cognition are among the most challenging to care for. Studies have found that patients with dementia are more likely to be abused. Resident behaviors such as cursing, kicking, and attempting to escape (whether caused by dementia or not) correlate with higher incidences of abuse. Another risk factor is the relative dependence of residents on caregivers. Abuse and neglect are more likely to occur in homes that have both a high percentage of residents

with dementia and low staff levels. Studies have found that patients with dementia are more likely to be abused. This further illustrates the importance of adequate staffing. In fact, a report by PBS suggested that because of the lower wages paid to nursing home staff, these facilities are often understaffed.²⁸ This is because many people choose higher-paying positions instead, such as hospitals or retail.

Resident-Visitor Frequency

Family and friends are an important line of defense for vulnerable elders. Nursing home residents who don’t regularly have visitors are isolated and are at greater risk of being abused or neglected.

Protecting Your Loved Ones

Speak with a home’s management and staff to get a sense of policy, working conditions, and complaint or deficiency incidence. You can also get a feel for the home’s daily operations simply by spending time there. Sometimes, though, it’s the smallest step that makes the biggest difference. Just by visiting a loved one in a nursing home, you’re helping to ensure a better quality of care.

Sources:

- Statistics/Data, https://www.elderabusecenter.org/default.cfm_p_statistics.html
- Nursing Home Abuse Risk Prevention Profile and Checklist, <http://www.aaaceus.com/courses/NL1008/Article6.pdf>
- National Council on Aging: Elder Abuse Fact Sheet, <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>
- Kentucky Cabinet for Health and Family Services, <https://chfs.ky.gov/agencies/dcbs/dpp/apb/Documents/2013KentuckyElderAbuseReportV32014.pdf>
- Administration on Aging: Aging Integrated Database, <https://agid.acl.gov/>

²⁸ PBS News Hour, “Most nursing homes are not adequately staffed, new federal data says,” July 13, 2018, Source: <https://www.pbs.org/newshour/health/most-nursing-homes-are-not-adequately-staffed-new-federal-data-says>

CHAPTER 9: NURSING HOME NEGLECT & ABUSE INVESTIGATION IN KENTUCKY

By law, anyone who suspects elder abuse in Kentucky must report it. If you believe your loved one is in immediate danger, call the police or sheriff's department. If you suspect that abuse has occurred or is ongoing, it's important to report it to someone.



Here's how the reporting process works for injury, abuse, or death of a nursing home resident in a Kentucky nursing home:

1. When a resident has a "change in status," the nursing home by law must notify the physician and the resident's family. A family may be notified of a resident's death, but there may be little explanation of the cause.
2. Suspected abuse or neglect (including cases of resident death) must be reported to the Office of Inspector General (OIG).
3. The OIG investigates the report, and if the agency finds violations, issues a citation to the nursing home. But a citation is different from criminal prosecution.
4. When a citation is issued to a nursing home by the OIG, the citation is also sent to the Attorney General's (AG's) Office of Medicaid Fraud and Abuse Control. The OIG can also refer the case directly to local law enforcement, but it doesn't have to. Local law enforcement decides whether to investigate and refer the case to local prosecutors.
5. The AG may contact local prosecutors or law enforcement, which have jurisdiction in abuse cases. With permission from local prosecutors, the AG can prosecute.

Prosecutions of elder abuse cases in Kentucky are rare. The *Lexington Herald-Leader*, which focused attention on the issue in 2010 through its investigative series "Voiceless and Vulnerable: Nursing Home Abuse," found that prosecutors pursued only seven of more than 100 of the most serious types of citations issued over a three-year period.²⁹

What You Can Do If You Suspect Abuse

Family members who notice something amiss with a nursing home resident can request an investigation by the Office of Inspector General, county coroner, or state police rather than letting the case go solely through state channels. Be prepared to give your loved one's name, address, contact information, and a description of the suspected abuse.

²⁹ Musgrave B and Spears V, "Nursing home prosecutions rare," *Lexington Herald-Leader*, July 11, 2010.

The Kentucky Attorney General has recommended that any family member who suspects elder abuse or neglect keep detailed records (including a journal and photographs or video) of anything out of the ordinary, as well as of complaints made and letters written to the home’s administration.³⁰ Review the chapter in this guide on recognizing the warning signs of nursing home abuse and neglect. Documenting abuse will be invaluable if you decide to pursue legal action against a nursing home.

Nursing home incident criminal prosecutions are difficult because many elders are unable to testify. And because police investigations are rarely, if ever, immediate, physical evidence is often lacking. So, it can be difficult to determine exactly what happened.

For a quicker response, you may wish to contact an attorney who investigates nursing home neglect and abuse cases on behalf of families. Our nursing home abuse lawyers can help you report the case to the proper authorities and act quickly to secure evidence and records from a nursing home before they are lost.

Many families who find themselves in this situation don’t know where to turn. The lawyers of Becker Law Office are dedicated to assisting nursing home residents and their families. You can rely on our many years of legal experience representing numerous families facing issues of elder mistreatment, abuse, and neglect. Initial consultations with our nursing home abuse attorneys are free.

Sources:

The Lexington Herald-Leader:

- Nursing home prosecutions rare
- Light sentences for elder abuse convictions
- Abuse investigations tend to languish
- Kentucky Commonwealth Office of the Attorney General: How to Protect Nursing Home Residents <https://ag.ky.gov/publications/AG%20Publications/Protect-Nursing-Home-Residents.pdf>

³⁰ “How to Protect Nursing Home Residents,” www.ag.ky.gov



CHAPTER 10: KENTUCKY ADULT ABUSE REGISTRY

Most residents of nursing homes receive excellent care. But it takes only one bad employee to cause harm. Kentucky seniors and other vulnerable adults should receive better protection thanks to the Adult Protective Services Caregiver Misconduct Registry. The registry became law in July 2014.

The registry lists individuals with a record of vulnerable adult abuse, neglect, or exploitation occurring on or after July 2014. The Kentucky Department for Community Based Services (DCBS) maintains the registry.³¹ Adult services providers, such as long-term care facilities, assisted living facilities, and home-health agencies, can access the registry (though the general public cannot). Providers can also submit queries for current employees and for volunteers and job applicants who are seeking employment. Individuals are permitted to self-query the registry.

How the Registry Works

Key provisions of the law that enacted the Kentucky Adult Caregiver Misconduct Registry³² include the following:

- The Registry must include validated findings of abuse, neglect, or exploitation that took place on or after July 14, 2014 (when the law took effect). Records before that start date are not included.
- Individuals listed in the registry may or may not have been convicted of criminal charges.
- Queries are based on an individual’s Social Security number.
- Employees who show up on the registry have been found by a DCBS investigation to have committed adult mistreatment.
- Individuals investigated by DCBS for mistreatment are entitled to due process that includes an administrative hearing and an appeal to the Circuit Court of the county where the alleged mistreatment occurred.
- An individual will appear on the registry only after due process has been exhausted and the cabinet has entered a final order based on a preponderance of evidence that mistreatment was committed.
- Validated findings of adult mistreatment will be removed from the registry after seven years unless the finding pertains to a fatality, near-fatality, criminal conviction, or civil judicial determination.

³¹ www.chfs.ky.gov/agencies/dcbs/

³² www.chfs.ky.gov

- The Kentucky Cabinet for Health and Family Services Office of the Inspector General may penalize a facility that hires someone with a record of adult abuse.

Substantiated DCBS Complaints (2017)

In 2017, the Department for Community Based Services (DCBS) noted that there were 30,233 reports of adult abuse of Kentuckians 60 years and older. Of these, 4,882 reports (16%) were substantiated.³³ Kentucky law requires state criminal background checks for nursing home workers who provide direct care to residents. But nursing home employees are rarely convicted of elder abuse or similar crimes.

The Kentucky Adult Caregiver Misconduct Registry provides a way to screen for people who have Adult Protective Services histories of abuse or neglect, even if they haven’t been convicted of a criminal offense. This is an important distinction.

Criminal Background Checks for Kentucky Long-Term Care Workers

A multi-state background check program for workers in long-term care settings known as the Kentucky Applicant Registry and Employment Screening Program was signed into law in 2013. The fingerprint-supported state and Federal Bureau of Investigation (FBI) background check program is a way to ensure that prospective nursing home employees cannot hide criminal actions committed in other states.

Sources:

Cabinet for Health and Family Services:

- Kentucky Elder Abuse Annual Report (2013)
- Kentucky Adult Protective Services Caregiver Misconduct Registry

Kentucky Legislative Research Commission:

- Statutes --209.032
- HB 277

Lexington Herald-Leader:

- Light sentences for elder abuse convictions
 - Kentucky legislators seek to make mandatory new background checks for long-term care workers
- Bill would require background checks for all nursing home employees:**
- The Lane Report: Governor signs law creating caregiver misconduct registry

³³ 2017 Elder Abuse Report, DCBS, www.chfs.ky.gov/agencies/dcbs/

CHAPTER 11: HOW A LAWSUIT CAN PREVENT NURSING HOME NEGLECT & ABUSE

If your mother, father, or other loved one lives in a nursing home, you may wonder about the quality of care he or she is receiving. You may have had a positive impression of the nursing home initially but made some observations over time that left you feeling unsettled. The administrator of the nursing home may have dismissed your concerns outright or failed to provide thoughtful answers that satisfied your questions.

If you suspect abuse or neglect, you need to know what you can do to protect your loved one, and whether an attorney can help. The federal government, in conjunction with individual states, regulates nursing home care and may assess penalties for inadequate care.

Among the 284 Kentucky nursing homes, 59 have been flagged with serious deficiencies, and the government has issued approximately \$8.1 million in penalties throughout the state, including 30 payment suspensions from 2016-2019 according to ProPublica.³⁴

The Commonwealth of Kentucky can bring criminal charges against nursing home staff who abuse or neglect a resident. These charges may result in the abuser being found guilty of a misdemeanor or felony. Any abuser found guilty of nursing home abuse or neglect would lose their professional license, which would prevent them from working in a care facility in the future.

A family member can request an elder abuse or death investigation by the Kentucky Office of the Inspector General, the county coroner, or the local police. It is ultimately up to law enforcement to investigate and refer the case to local prosecutors for criminal proceedings. But nursing home criminal prosecutions are uncommon. An investigation by the *Lexington Herald-Leader* found that over a three-year period, only 7 of 107 serious nursing home violations led to prosecution.³⁵



³⁴ <https://projects.propublica.org/nursing-homes/state/KY>

³⁵ Musgrave B and Spears V, "Nursing home prosecutions rare," *Lexington Herald-Leader*, July 11, 2010.

There is another way to protect your loved one and call attention to a problem at a nursing home facility. The family of a nursing home resident can file a civil lawsuit against the nursing home or responsible party. A lawsuit can deliver justice to an abused nursing home resident and protect other residents from similar harm. It can shine a light on the problem of nursing home abuse.

Civil Cases

An attorney can file a civil claim on behalf of a home resident or his or her family. If the claim is successful, damages or monetary awards are provided to the victim. Damages cover things like:

- Medical treatment costs
- Physical pain
- Mental anguish
- Attorneys’ fees

A nursing home abuse or neglect lawsuit can also result in punitive damages meant to punish the wrongdoer. Compared to other types of personal injury cases, nursing home cases more often result in punitive damages.

The Challenges of a Nursing Home Lawsuit

More and more nursing homes across the nation are corporate-owned chains that use well-known tactics to thwart the attempts of nursing home abuse victims to file lawsuits. Many nursing homes now require residents to sign away their right to sue. Buried in the fine print of many contracts is language requiring that claims against the home or its employees be brought in private arbitration (rather than a court of law).

Private arbitration strongly favors the nursing home. A report on the nursing home industry



by PublicJustice.net shows showed that as disputes are settled in arbitration rather than court, the money recovered by abuse victims has decreased.³⁶

An arbitration clause doesn’t mean that you can’t hold a nursing home or staff member responsible for resident abuse, but it does mean that you may require legal help. A reputable attorney who handles nursing home neglect and abuse cases will meet with the family of a nursing home resident at no charge, review their concerns, and advise them whether they have a legal case. In some instances, a civil lawsuit may be the best way to achieve a positive outcome.

Sources:

- Pro-publica: Nursing Home Inspection Penalties for Nursing Home Date are not included.
- Take Justice Back: Nursing Homes
- Public Justice: Vulnerable Nursing Home Patients Need Ability to Sue in Court as Government Agencies Fail to Protect Them

³⁶ PublicJustice.net, “Countering Nursing Homes’ Bogus Arguments to Keep Negligence Hidden,” October 14, 2014.



The attorneys at
Becker Law Office
are available to meet
with your family
for a free initial
consultation.



CHAPTER 12: INTRODUCTION TO BECKER LAW OFFICE

We understand the stressful transition that your family faces. We want the relocation of your loved one to a long-term care facility to proceed as smoothly as possible. We have prepared this information about selecting a nursing home based on our years of experience working with families of nursing home residents. It's part of our commitment to the families we serve.

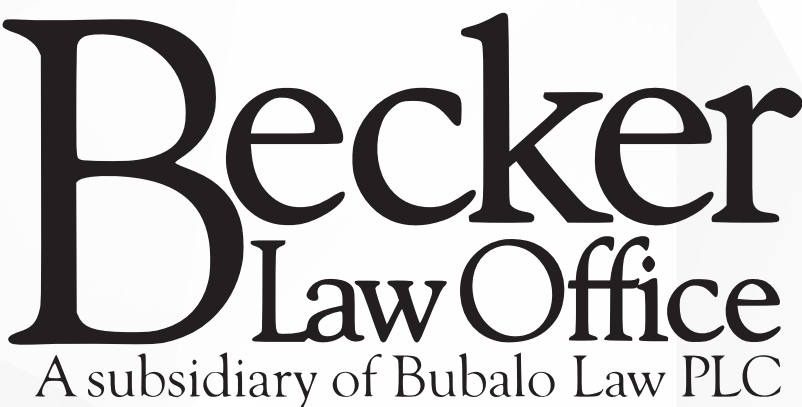
Our elderly loved ones deserve the highest level of care. Federal law requires all nursing homes to provide services and activities that ensure the highest practicable physical, mental, and psychosocial well-being of each resident.

Unfortunately, even highly rated nursing homes sometimes fail to meet their legal obligations. A change in ownership or management may affect staffing and morale, and lead to deterioration in the quality of care at a nursing home. In those cases, families must take steps to protect their loved one. The attorneys at Becker Law Office are available to meet with your family for a free initial consultation. We have years of experience investigating cases of nursing home neglect and abuse. We can move quickly to protect your loved one. As we've observed, nursing home abuse and neglect cases frequently do not end in criminal prosecution because the evidence is often lacking, and abuse victims may have trouble testifying.

Many nursing homes are now for-profit, and this is affecting the quality of care. Homes often insert language in the fine print of care agreements that prevents allegations of abuse or neglect from being heard in a court of law. Instead, cases are heard in private arbitration, a proceeding that strongly favors nursing homes. Becker Law Office can help you overcome the limitations of an arbitration clause in a nursing home case. We'll assemble the evidence you need to show that abuse or neglect occurred.

A civil lawsuit against an abusive nursing home can provide money for a victim's hospital bills and suffering. It also frequently leads to operational changes at the facility that prevent other residents from suffering similar injury. Institutions and individuals who mistreat elders should be held accountable.

If you believe that a loved one in a Kentucky nursing home has been abused or neglected, let Becker Law Office help you obtain justice. **To discuss your case for free with an experienced attorney, call us toll-free at (502) 333-3333.**



Louisville Office

9300 Shelbyville Rd #215A
Louisville, KY 40222
Phone: (502) 333-3333
Fax: (502) 581-0124

Lexington Office

1344 South Broadway
Lexington, KY 40504
Phone: (859) 333-3333
Fax: (859) 519-1751

Florence Office

7310 Turfway Road
Florence, KY 41042
Phone: (859) 333-3333
Fax: (513) 333-3333

WWW.BECKERLAW.COM

Becker
Law Office
A subsidiary of Bubalo Law PLC

333-3333

WWW.BECKERLAW.COM