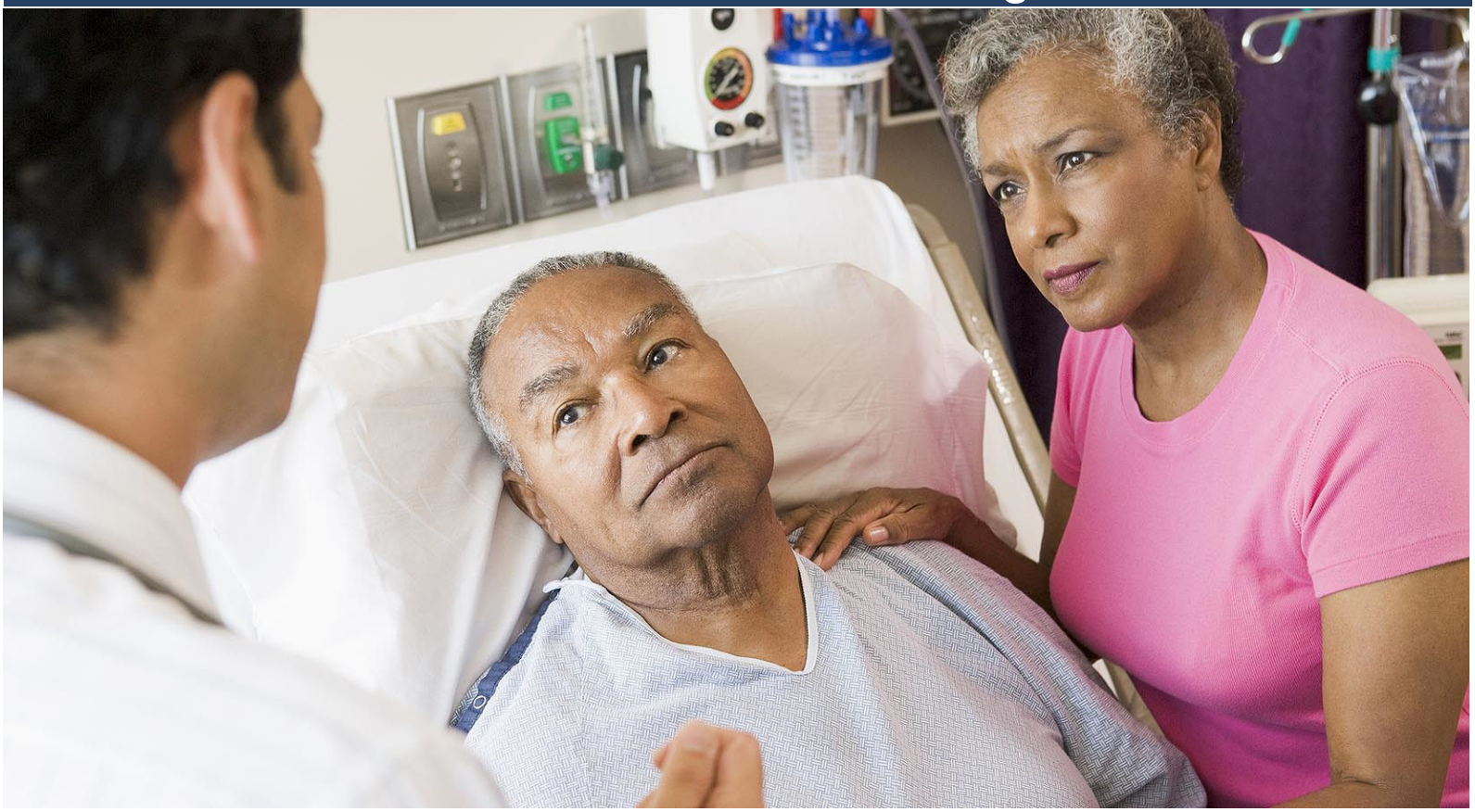
7 Things You Need to Know

Before You Choose a Nursing Home



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ABOUT THE FIRM

The SLATON SCHAUER LAW FIRM, PLLC exclusively practices estate planning law. This focus ensures that our clients obtain the best possible legal advice in this complex field. Your situation-- family or business, simple or complicated-- is in safe hands with the Slaton Schauer Law Firm, PLLC. Our estate plans are always tailored to meet both your goals and your family's needs. We listen to your concerns and discuss your unique circumstances, getting to know you and your family as individuals. We're sensitive to the personal nature of each situation that enters our firm, and we work with you to determine the best path forward. Different situations require different solutions; no single "cookie cutter" plan fits everyone.

Regina Schauer has been practicing law for over 25 years. Her experience and accolades include 8 years of service as a judge, working in a prosecutor's office, being named Judge of the Year by the Department of Human Services, and being honored as Attorney of the Year by Legal Aid. Before she began practicing exclusively in estate planning Regina ran two international programs where she assisted in adoptions of Russian orphans. She helped to place these children into loving American homes, giving them a chance at a decent and productive life. Regina has 3 children, so she personally understands how both family dynamics and generational legacies must be carefully considered in estate planning.

Andrew T. Slaton-Freeman has a background in complex contracts, the defense industry, and business organizations. This includes work with scientific entities at Texas A&M University (especially contracts between research institutions and outside vendors), experience with a large military contractor, and litigation for the Texas Office of the Attorney General. He is Regina's oldest son, and is committed to upholding the family values and client focus of the Slaton Schauer Law Firm, PLLC for generations into the future. When he's not at work, Andrew enjoys taking his dog on hiking trips, volunteering in the local community, and playing tabletop games.

Both Regina and Andrew are members of American Academy of Estate Planning Attorneys (AAEPA). The AAEPA is a prestigious, invitation-only organization which has fewer than 15 members in all of Texas. To remain in good standing with the AAEPA an attorney must meet qualifications that include significant education requirements; these are more than double those required of most attorneys in Texas. Andrew has also been accepted into the Texas Bar College. This is an honorary society for attorneys who have obtained even more additional education. Both attorneys at the Slaton Schauer Law Firm, PLLC approach estate planning law

from a skillful, academic perspective, with a passion for providing the very best estate plans possible at a reasonable cost to clients. This care helps to fuel our passion for both legal education and local volunteerism.

If you or your loved ones would like a complimentary consultation with us to discuss your estate planning options, we are happy to answer questions, discuss the differences between wills and trusts, explain various types of trusts, and explore other estate planning tools that may be correct for your situation. This knowledge can help to empower you in making informed decisions to protect yourself, your family, and even your legacy. We look forward to meeting you.

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CONTACT US

Slaton Schauer Law Firm, PLLC
102 Raley Road
Cedar Park, TX 78613
Phone: (512) 258-9455
www.austinestateplan.com

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7 THINGS YOU NEED TO KNOW BEFORE YOU CHOOSE A NURSING HOME

Placing a spouse or a parent in a nursing home is likely one of the most difficult decisions you'll ever have to make. It's not a decision anyone wants to face. To make matters worse, it is often a choice that must be made under pressure, with little warning.

For many of people, it's a once in a lifetime decision.

This means you don't have much, if any, experience to draw on when choosing a facility. How do you know a good nursing home from a bad one? How do you decide which questions to ask when you interview the facility's administrator and staff?

Added to this sense of pressure is often a sense of guilt. Your siblings or other family members might not agree with the decision to place your loved one in a nursing home. You might wonder if you've done everything you can… or if there's another alternative.

The purposes of this guide is to provide an overview of the things you should know when you're considering placing a loved one in a nursing home and to point you to resources you can use to find more in-depth assistance. While we know this guide won't change the difficult circumstances you're facing, we hope it will help ease you through the transition you and your family are about to make.

1. A NURSING HOME MIGHT NOT BE THE ONLY OPTION

Have you ever met someone who says they look forward to going into a nursing home? Probably not, and for good reason.

Even the very best nursing homes are not much like home at all. Becoming a nursing home resident means a huge change in lifestyle, including giving up the freedoms and many of the comforts of home.

Sometimes, a nursing home isn't necessary. There are alternatives that provide a middle ground between independent living and nursing home care. The problem is, many people just don't know they're available.

Home Health Care

Home health care is exactly what it sounds like – rather than move into a facility, your loved one remains at home (or moves into your home) and family members, friends, or others help with his or her personal care activities.

If family or friends cannot manage your loved one's care on their own, your loved one might choose to hire a home health aide. There also may be volunteer organizations in your area that can help you with your loved one's needs, allowing him or her to remain at home.

Respite Care

If you are helping to care for an aging or ill family member, respite care may prove to be a valuable resource. Respite care programs provide "time off" for family members or others.

Under a respite care program, a substitute caregiver comes to your home to help care for your loved one for a short period. Another alternative is for your loved one to go to an assisted living facility or a nursing home for a short period, while you or your loved one's other usual caregivers take a short time to rest and recharge.

Assisted Living

An assisted living facility is a long-term living arrangement that offers residents as much independence as they want, while providing staff to help with basic activities of daily living such as bathing, dressing, and grooming. While assisted living facilities don't offer medical care to their residents, some states allow them to offer medication reminders and assistance. This can be a good solution for someone who needs a little extra help on a daily basis, but who is healthy enough not to require the additional hands-on care a nursing home provides.

However, your loved one might need a nursing home. Before making a decision, it pays to first speak with your loved one's doctor, social workers, or other health care professionals to see if these or other alternatives are a good fit.

2. NURSING HOMES - THE TRICK IS FINDING THE RIGHT ONE

What image springs to mind when you hear the words "nursing home?"

Maybe you think of a depressing place to live. One filled with unpleasant smells, uncaring staff members, and bad food. It's not at all a place you'd like to live, nor is it a place you'd send your loved one.

Although this kind of negative stereotype persists, the truth is that most nursing homes are clean, pleasant places with caring staff members and healthy (if not gourmet) food. Laws, often called the "Nursing Home Patient's Bill of Rights," have been enacted to ensure that nursing home residents live in a safe, healthy environment and receive good care.

However, even among good nursing homes, there is a great deal of variety in the services and care they provide. Facilities offer different activities and services, some have specially trained staff on hand to deal with particular medical issues, and some are just more aesthetically

pleasing, or have a better "feel" than others. All of these things are matters of individual need and personal preference, and it can be hard to find the right nursing home – particularly if you don't have much time to investigate your options.

Even if you have plenty of time, chances are you don't have much experience with nursing homes. If you're like most people, you might not know exactly what to look for on a nursing home visit, or what questions you would need to ask of staff members or patients to determine the quality of the facility and whether it is a good fit for you or your loved one's needs.

How the Government Helps

The federal government sets guidelines for all nursing homes participating in the Medicare or Medicaid programs. Since a large number of nursing home residents use these programs to pay for their care, most nursing homes participate. This means that most nursing homes are subject to federal guidelines.

One of the things required under these guidelines is that each participating nursing home be inspected – usually annually – by a team of trained inspectors. The inspectors show up unannounced and conduct an inspection that generally lasts between two and five days.

The goal of these inspections is to make sure nursing homes meet the nearly 200 regulations Congress has enacted to protect nursing home residents. These regulations cover a wide range of issues, from ensuring that residents have safe, healthy food to eat to shielding residents from mistreatment and abuse.

Using the regulations, the inspectors take a detailed look at the nursing home. Some of the things these inspections cover include:

- Reviewing residents' clinical records
- Inspecting the physical cleanliness of the facility
- Interviewing staff and administrators
- Talking to residents and their families

The inspectors' discussions with the residents are particularly helpful. They talk one-on-one with residents and ask questions like:

- How do you like your room? What is it like?
- Do you get to choose whether to change rooms?
- Is there enough light?
- Do you have enough privacy?

- Do you like the food that you are served?
- Does the nursing home usually look and smell clean, or are there often bad smells?
- Are there activities for you to participate in?
- Do the staff members talk to you? Do you feel that they are interested in you as a person?
- Has any staff member ever yelled at you?
- Has any staff member ever physically hurt you?
- Do you meet or talk with staff members to plan your activities and your daily care?

In addition to talking one-on-one with residents, inspectors also talk to residents in a group interview. There, they discuss topics like the rules of the nursing home, whether there is enough privacy, if personal property rights are respected, whether residents are treated with dignity, and other topics that concern quality of life in the nursing home.

When the inspection is over, the information gathered by the inspectors is compiled into a report. These reports are kept at the nursing home, and they are available to the public. The information contained in the reports is also used by websites like Medicare's Nursing Home Compare (medicare.gov/NHCompare) to compile nursing home ratings. While Nursing Home Compare uses government reports to rate nursing homes, it does not make full reports available online.

The availability of these reports can be incredibly helpful to you as a consumer, because it reduces much of the legwork you might otherwise have to do. Without such information, you would need to conduct a detailed review of each available nursing home before you could even narrow down your options.

With these reports available to you, it's possible to quickly narrow your search based on the government's assessment and description of the nursing homes in your area. As you'll see later in this report, your estate planning and elder law attorney can be a valuable aid in wading through the reports, interpreting the information they contain, and determining which nursing home is the best fit for you.

Finding the Right Facility

Armed with this information, you are in a great position to visit the nursing homes that best fit your needs and desires, and get a first-hand feel for the environment. You'll have insight into how the facility actually functions, without having to worry that they're putting on their best face just so they can "sell" you on their facility.

3. THE ADMISSIONS PROCESS ISN'T ALWAYS EASY

Finding the right nursing home is not necessarily the end of the battle…in fact, your work may just be beginning.

MAKING THE TRANSITION

Often, the first part of the battle is an emotional one. Consider Anne's story.

For Anne, the past two years have been a constant juggling act. Her father moved in with Anne two summers ago, and her role in his life shifted from daughter and friend to hands-on caregiver. Something else happened, too. Little by little, Anne's already busy schedule became almost impossible.

At first, it was almost like Anne's dad was at the house on an extended visit. He kept himself busy while Anne and her husband were at work and the kids were at school. In the evening and on weekends, the whole family enjoyed spending time together.

But slowly, things began to change. Dad's health began to deteriorate, and Anne found herself taking time off work to drive him to doctor's appointments. Eventually, Anne left her job to care for her dad full-time, and this worked well – for a while.

After several months, her dad started becoming disoriented and wandering off. He began to fall, eventually breaking his hip. Finally, Anne realized she could no longer care for her dad on her own. She simply couldn't watch him every minute of the day.

She talked to an estate planning and elder law attorney, and found the best nursing home for her dad. When the day came to take dad to his new home, Anne put on a brave face and showed him his new room. She chatted with his roommate about what a beautiful place the nursing home was. Then, she told her dad it was time for her to go. "I'll be back to see you tomorrow, Dad," Anne said. She gave her dad a hug and walked to her car, fighting back tears.

It was at this moment that Anne realized her role had shifted again. She was no longer her dad's hands-on caregiver; she was now his advocate and care manager.

QUALIFYING FOR CARE

As your loved one's care manager, it's important to understand that not everyone qualifies for nursing home care. In order to qualify, the patient must have a medical issue that requires around-the-clock monitoring.

First, the nursing home will need a written order, signed by the potential resident's doctor, stating that the patient should be admitted to a nursing home. In addition, the doctor will need to supply certain medical records for the potential resident. The exact requirements vary from

facility to facility, but generally, the doctor providing the order will be asked to furnish the following documents:

- A history and physical report. This written summary details the patient's height, weight and age, an explanation of the patient's main medical issues, and an explanation of any secondary medical issues.
- A list of current medications, signed by the doctor.
- Copies of the patient's most recent lab reports.
- A copy of any other information in the patient's medical records (such as therapy reports or doctor's notes) that would assist the nursing home in providing care to the patient.

After the nursing home receives these records, they are evaluated by the admission department. If additional information is needed, you will be notified. Some nursing homes also require that the potential resident be evaluated by a member of the facility's nursing staff prior to admission.

Often, the facility will coordinate the transfer of this paperwork from the patient's hospital or doctor, allowing you to save your time and energy. This lets you devote your attention to two very important issues: paying for care and making sure your loved one gets the best possible care once he or she moves into the nursing home.

4. DON'T GO BROKE PAYING FOR NURSING HOME CARE

Nursing home care is expensive. Nationwide, the average cost of a private room in a nursing home is $87,235 per year. Few people can afford to pay the full cost of a long-term nursing home stay. So, how do you cover the cost of nursing home care…and who exactly is responsible for the nursing home bills?

MEDICARE

Medicare is the federally-funded health insurance program for those who are over age 65 or on Social Security disability for at least two years. The program provides limited long-term care coverage, and many people assume that Medicare will take care of their nursing home expenses. Unfortunately, this is generally not the case. Medicare typically covers 100 days of long-term care at most.

LONG-TERM CARE INSURANCE

If your loved one has long-term care insurance, the policy may cover most – or even all – of his or her nursing home expenses. It's important to review the policy as soon as you suspect a nursing home stay may be necessary. Knowing exactly which expenses are covered and which are not can spare you and your family a number of unwanted surprises.

WHAT ABOUT THE CHILDREN?

People often fear that, when their money runs out, their children will be saddled with their nursing home bills. There is no good reason for you to bear the responsibility for your parent's nursing home bills. Often, however, nursing home agreements attempt to make a resident's children or other loved ones responsible for a resident's bills. This is why it is important that you carefully review the nursing home admission agreement (or get assistance from an experienced estate planning and elder law attorney). Do not sign anything that you don't understand – and don't take the nursing home's word for it.

MEDICAID

What happens if your loved one does not have long-term care insurance, and he or she doesn't have the means to pay for a nursing home stay out-of-pocket? Depending on their income and assets, your loved one may be able to qualify for Medicaid. Contrary to popular belief, you do not have to impoverish yourself or your family completely in order to qualify. However, because of the nature of Medicaid rules, it is important to talk to an estate planning and elder law attorney and begin the Medicaid planning process as far in advance as possible. Here's an example:

Mark, Mary, and the $110,000 Mistake

Mark and Mary had been married for nearly 45 years when Mark was diagnosed with dementia. At first, Mary cared for him at home. After a while, though, it became apparent that Mark needed more care than Mary could provide. So, Mary asked her friends for their recommendations. She found a nursing home that would accept Mark.

The price tag for the special Alzheimer's unit was over $88,000 per year – talk about sticker shock! But Mary was sure she and Mark had too much in savings and investments to qualify for Medicaid.

Just to be sure, she talked to a friend who had recently gone through a similar experience. The friend assured Mary that she could keep about $113,000 in cash and investments, plus one car, a small life insurance policy, and her house. Before Mark could qualify for Medicaid, Mary would have to spend the rest of their assets on the nursing home.

So, Mark was admitted to the nursing home and Mary spent the next fifteen months paying for his care – a total of $110,000. Then, when she met the asset requirements her friend had told her about, she applied for Medicaid on Mark's behalf. Mary thought she had done everything right, and Mark did qualify for Medicaid.

There was just one problem: if she had talked to an estate planning and elder law attorney, Mary would have known about Medicaid planning. In Mary's case, Medicaid planning would have allowed her to take a few perfectly legal steps to keep the money she spent on Mark's nursing home care. She could have used provisions built into federal law to preserve this money for herself and her family, and Mark still would have qualified for Medicaid.

And this is just one piece of valuable advice an estate planning and elder law attorney could have given Mary.

5. RESIDENTS DESERVE A MINIMUM STANDARD OF CARE

After you determine how to pay for care, your focus shifts to ensuring that your loved one receives the best possible care. Many people don't realize it, but the law provides a number of protections for nursing home residents.

For instance, did you know that the nursing home can't limit visiting hours? Under federal law, you have the right to visit with your family members at any time of the day or night. In fact, the more visits, the better. Visits from family members may be the single most important factor to a nursing home resident's quality of life and quality of care. Staff members often provide better care if they know family members are involved in a resident's life and are likely to be present and watching.

As most nursing home residents will tell you, visits from family members can be the highlight of their day or week. As a practical matter, if your loved one is in a shared room and his or her roommate is sleeping, the nursing home can arrange for you to spend time in a visiting room or another shared area of the facility.

Did you also know that the nursing home can't discharge a resident or move him or her to a different facility simply for being difficult to deal with? In fact, a nursing home may only discharge a resident for the following reasons:

- The facility can no longer meet the resident's medical needs, as documented in writing *by the resident's own physician.*
- The resident has failed to pay his or her bills after reasonable notice.
- The resident poses a danger to themselves or others. If the danger is health-related, it must be documented by a physician. If it is otherwise related to the resident's safety, it must be documented by the nursing home.

These are just two of the laws that govern how a nursing home must treat its residents. The full list of laws is known as the "Nursing Home Patient's Bill of Rights," and you can ask the nursing home — or your estate planning and elder law attorney — for a copy.

6. THE KEY TO GETTING THE BEST NURSING HOME CARE

The Nursing Home Patient's Bill of Rights forms a baseline level of care that, by law, the nursing home is required to provide. One of the requirements of federal law is that the nursing home

provides a care plan for each resident. Making sure your loved one receives a tailored care plan, and monitoring his or her care, is the key to getting the best possible nursing home experience.

The Baseline Assessment

The care plan starts with a baseline assessment of your loved one, performed by the facility's assessment team, soon after he or she moves into the nursing home (usually within the first two weeks). The assessment team may include a doctor, a nurse, a social worker, a dietitian, and a physical, recreational, or occupational therapist.

The purpose of this assessment is to gather as much information about your loved one as possible. This information will be used as the measuring stick against which his or her progress at the nursing home is tracked. The information gathered during the assessment will also be used to create the resident's care plan – an important part of the contract between the nursing home and your loved one.

You and your loved one are allowed to participate in the baseline assessment. Not only is it permissible that you participate, it is essential. You are in a unique position to contribute a wide range of information about your loved one's medical, social, emotional, and spiritual needs, as well as his or her preferences and routines.

For instance, if your mother is accustomed to sleeping until 9 a.m., or if she has always fallen asleep listening to her favorite classical music station on the radio, the care planning team should have this information.

The Care Plan

Soon after the baseline assessment is performed – within a month after your loved one moves into the nursing home – the assessment team will gather for a care planning meeting. You and your loved one are permitted at this meeting as well, and it is important that you attend. This is where the formal care plan is developed, and it is your chance to make sure that all of your concerns about your loved one's care are addressed.

Under federal law, nursing home care is required to result in improvement to the resident's condition, if possible. If improvement is not possible, then care must maintain the resident's condition or slow the loss of function.

It is important to understand these requirements because the care plan becomes part of the contract between the nursing home and your loved one. Therefore, the plan should spell out his or her medical, psychological or emotional, and social needs and it should detail what steps will be taken to improve or maintain your loved one's condition.

Your loved one's care plan will not remain the same indefinitely. Federal law requires nursing homes to review a resident's care plan every three months or whenever the resident's condition

changes significantly. The law also requires annual reassessments. Care planning meetings are held whenever a resident's care plan is updated, and you should plan to attend these meetings. You will also want to keep an eye on your loved one's progress to make sure the nursing home is providing the services specified in the care plan.

7. YOU DON'T HAVE TO DO THIS ALONE

You've already seen how an estate planning and elder law attorney can help you use the Medicaid planning process to preserve some or all of your assets while paying for nursing home care. But the right attorney can do even more to help relieve the stress of choosing a nursing home and getting the best possible care. In fact, he or she can guide you through the entire process

After you've found the right nursing home, an experienced estate planning and elder law attorney can help you negotiate the admissions agreement, avoiding common pitfalls such as signing an agreement that makes you responsible for paying your loved one's nursing home bills. He or she can also help you be an active, positive contributor to your loved one's care plan. And last, but certainly not least, an experienced estate planning and elder law attorney can guide you in monitoring your loved one's nursing home care - making sure you know your loved one's rights and helping you enforce them.

The right estate planning and elder law attorney acts as your family's trusted advocate, helping your loved one find the right nursing home, get the very best care there, and pay for it all without going broke.