



**State of Nursing Homes
and Elder Abuse in Florida**

An Attorney's Special Report

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AVALANCHE OF PEOPLE (Increasing Age in Florida)

With a 65 and over population of 3,259,602 and a median age of 40 or above, Florida has the greatest number and percentage of residents age 65 and over compared to other states. Four of the nation's top ten cities with the highest percentage of population age 65 and over are in Florida: Clearwater, Hialeah, Cape Coral, and Miami. Additionally, the median age of Florida's population aged 65 years and older is 74.3. With an exploding population of elderly residents, Florida is facing significant challenges in how to handle a population who will demand more healthcare, as well as long-term care.

The population of those 65 years and over has been steadily growing for the past 50 years. In 1960, people 65 and over made up only 9% of Florida's population. Twenty years later, that same age group grew to 17% of the population. Today, this same age group accounts for more than 20% of the population in the state of Florida. A median age of 29.5 in 1960 has grown to a median age of over 40 currently. Additionally, almost a million Floridians are 80 years of age or older. By 2030, Florida's population is projected to grow by almost 4.8 million, and Florida's older population (age 60 and older) will account for most of Florida's population growth, representing 56.9 percent of the gains. By 2040, Florida's older population is expected to almost double.

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Several factors have contributed to a growing elder population in Florida. To begin with, the aging of the Baby Boomers into the older age groups has been contributing to the increase in the median age in both the U.S. and Florida. Falling fertility rates are contributing to a larger elderly population outweighing the younger generations. Lastly, with a life expectancy of 78.7 in 2011, the U.S. population is experiencing a rising longevity. Better healthcare and state-of-the-art technology are affording people much longer lives than in the past.

While population growth is Florida's primary engine of economic growth, fueling both employment and income growth, the marked growth in Florida's elderly population presents several unique challenges. Economically speaking, the ratio of taxpaying workers to retirees will fall as Baby Boomers age, creating a worker shortage and a lack of younger workers to replace new retirees. Additionally, the rise in the elderly population will put a significant strain on the healthcare industry. Elderly Medicaid recipients account for an estimated 31.72% of the total caseload—but 58.12% of Medicaid spending. Use of acute and long-term care services is high, with the majority of nursing home residents relying on Medicaid support after the cost of their care exhausts their savings. An increasing array of new services, procedures, and drugs prolong life but also create the potential for chronic problems. Also, the number of available family caregivers will diminish in relation to the number of elderly who need care, presenting a greater demand for long-term care facilities.

Florida's population aged 75 and over currently represents about one-third of the 65 and over age group and is expected to increase to slightly over half of that age group by 2040. With this kind of exponential growth, Florida must find strategies to meet the needs of the elderly population and combat the challenges it brings.

Sources: "Florida's Economic Future and the Impact of Aging," Florida Assisted Living Federation of America. <http://edr.state.fl.us>. March 17, 2014.

OWNERSHIP AND CHANGE IN CORPORATE STRUCTURE

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It is important to understand the dynamics and interrelationships between the varying entities and individuals that are involved in the nursing home organization. There is significant tension between the provision of quality care, on one hand, and the maximization of wealth by the provider community on the other. In other words, a conflict arises in determining how much of the financial resources actually go to the care of the resident versus how much goes into the pockets of the executives and owners. The allocation of resources to patient care is a critical component of the delivery system. Without adequate resources assigned to patient care, including staff, supplies, and other support systems and services, the quality of care at a skilled nursing facility can be significantly impacted in a negative way.

In the fall of 2003, the Journal of Health Law published an article entitled “Protecting Nursing Home Companies: Limiting Liability through Corporate Restructuring,” authored by Joseph E. Casson and Julia McMillan. The article lays out a corporate structure approach that had already begun to be used by nursing home chains. Since the article, there has been a widespread restructuring of nursing home ownership and operating companies to isolate liability while maintaining functional control at higher levels of the organizational structure.

The government has long recognized that party transactions have the potential to divert resources of the provider from the care of the patients to other more profitable uses for the ultimate owners and their associates. This means that when the nursing home purchases goods and services from related entities and persons, it allows them more freedom to assign monies to the owners of the facilities and their associates instead of allocating it for resident care. As a result, the federal government has placed constraints on related-party transactions to limit how much and which type of these transaction expenses will be reimbursed by Medicaid and Medicare. Currently, nursing home corporate entities are still looking for ways to bypass the restrictions so they can pocket more money, which ultimately takes money away from patient care. This flagrant trend in corporate structure is just one of many reasons nursing home residents do not receive the resources and quality care to which they are entitled.

Source: Watrel, Steve. 2016.

DIFFERENCES IN FACILITIES

Once you recognize the need to find a long-term care facility for your loved one, the next step is to find out what type of facility meets your loved one's needs. Significant differences exist between independent living facilities, assisted living facilities, and nursing homes. These range from little to no care to complete, full-time, skilled nursing care.

Independent Living Facilities (ILFs) are similar to senior apartments. They may provide a meal plan and light housekeeping for a monthly fee. It's common for residents to still have their own driver's licenses. ILFs are ideal for those who require little to no supervision. Usually a manager is on duty, but ILFs are not heavily staffed with nurses or aides that provide care. The cost is typically between \$2,000 and \$3,000 per month.

Assisted Living Facilities (ALFs) provide a higher degree of care where full-time caregivers help residents with limited daily activities, make sure they take their medications, and check on them. Essentially, someone watches over the residents and notes changes in their health that may require additional care. Most Florida ALFs will help with daily living activities such as dressing, bathing, and assisting transfer from bed to wheelchair. ALFs typically have only a single nurse, usually an LPN, and in most locations, the aides are not required to be CNAs. ALFs cost more than ILFs because of the additional care and assistance, averaging \$4,500 to \$6,000 per month or more.

Skilled Nursing Facilities (SNFs) or Nursing Homes are more like hospitals when compared to ALFs. Nursing homes provide the highest degree of nursing care. If 24-hour skilled nursing assistance is needed, nursing homes are the right choice. Skilled staff members help with a range of daily activities, depending on the resident, including therapy, administering medications, assisting with meals, dressing, showering, and using the bathroom. People are often admitted to a nursing home for rehabilitation services. After a certain amount of time, usually around three months, if the resident still requires help with most daily activities, they will move to a long-term care unit within the same home that is providing rehabilitation services. Given the level of care, nursing homes are more expensive than ILFs and ALFs. In Florida, the average cost is around \$8,000 per month.

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Understanding the differences between the types of facilities is important in making the right decision for your loved one. If they don't get the level of care they need, regardless of the cost, you may end up doing more harm than good.

Source: Watrel, Steve. The Caregiver's Guide: Choosing the Right Nursing Home in Florida and What to do if you Suspect Abuse or Neglect. 2016.

RISING EXPENSES OF NURSING HOME CARE

In 2015, U.S. health care costs exceeded \$3.2 trillion, which marks health care as one of the largest U.S. industries. Compare that to 1960, when health care costs equaled a mere \$27.2 billion. This rise in health care costs can be attributed to two major factors. First, the creation of Medicaid and Medicare, as well as company-sponsored private health insurance, spurred demand for health care services, allowing providers to raise prices. Second, was in an increase in chronic illness, like diabetes and heart disease, which are responsible for 85% of health care costs. Nevertheless, with health care costs rising faster than the annual income, many families find themselves overwhelmed with the cost of long-term care for their loved ones.

The significant growth in the number of Americans age 75 or over coupled with the desire to minimize the duration of expensive inpatient hospital stays have focused more attention on nursing home trends. The cost of skilled nursing care is substantial, and growing. Currently, in Florida, nursing home care for an individual costs almost \$100,000 annually, which breaks down to about \$8,000 monthly. In ten years, the cost will rise to almost \$120,000 annually, and in the next 20 years, the costs are projected to double, costing residents close to \$200,000 annually.

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Because of the skyrocketing cost of care, it is important for families to understand financial considerations when choosing a long-term care facility. If you cannot afford private pay for nursing home care, other resources that may be available to you are Medicare, Medicaid, and Veterans Administration programs. In Florida, Medicaid is available to help with the costs of 24-hour, long-term nursing care for Medicaid-eligible recipients. Another financial resource is Medicare; Medicare beneficiaries are typically senior citizens aged 65 or older. The Department of Veterans Affairs also has programs to assist veterans with long-term care. Any veteran who served active duty for at least one day of war is eligible. It is also important to note that many long-term care facilities will assist with applying for financial assistance. While the

staggering cost of long-term nursing home care for your loved one can seem overwhelming and unaffordable, don't let this deter you from choosing a reputable facility and researching all financial resources available to you.

Sources:

"Average cost of nursing home care rises 2% annually, Lincoln report shows." www.McKnights.com. April 21, 2016.

"Causes of Rising Healthcare Costs." www.thebalance.com. Dec 7, 2016.

"Trends in Nursing Home Expenses." Medicare & Medicaid Research Review.

www.fhca.org

www.Genworth.com

ELDER ABUSE TRENDS

In Florida, during fiscal year 2001, the Florida Abuse Hotline received 39,516 reports of abuse and neglect. Almost three-fourths of the allegations/ reports involved people over 60. Research suggests that 700,000 to 1.2 million elderly people are subjected to elder mistreatment in the United States and there are 450,000 new cases annually. Of the cases reported in the U.S., 75% of elder abuse reports involved either physical abuse or neglect. Consequently, elder abuse and neglect in nursing facilities is on the rise and is particularly troubling, considering that most families trust the care of their most vulnerable loved ones to long-term care facilities.

The primary cause for elder abuse and neglect in nursing facilities is pressure from corporate for facilities to cut the budget wherever they can. These budget cuts result in a deficit in staff, particularly in RNs. RNs have the highest degree of education and are needed to administer medications and treatment to residents, coordinate plans for resident care, perform diagnostic tests and analyze results, instruct and educate residents on care, and oversee other workers, such as LPNs and nursing aides. Budget cuts prevent facilities from staffing to the needs of the residents, which is a violation of Florida and federal law and regulations. Research shows that 91% of nursing homes in the U.S. lack adequate staff to properly care for residents. When staffing is low, inadequate, or improperly trained, your loved ones will get inadequate care, which can result in neglect, serious injury, or even death.

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Serious abuse or neglect violates the resident's rights and puts their health or life in danger. Serious complaints of abuse or neglect include:

- **Pressure Sores**—When residents lie in bed for long periods of time or lie in their own urine or feces for long periods of time, it results in skin breakdown or severe bed sores. In the more serious stages, the ulcers can deepen all the way through the tissue to the bone. This can lead to serious health issues, including sepsis.
- **Malnutrition or Dehydration**—If the facility fails to assist your loved one with eating or drinking, it could cause them to suffer from malnutrition or dehydration.
- **Drops or Falls**—Many facilities drop residents or allow them to fall because they are not following the resident's care plan appropriately. Drops and falls can lead to serious medical conditions, including head injuries or hip fractures.
- **Sepsis**—This is blood poisoning, usually caused by some type of bacteria. It's commonly seen when bacteria gets into pressure sores and infects the system or when urinary tract infections are left undiagnosed. Septic shock requires immediate attention and can be fatal if the facility doesn't provide treatment.

If you suspect abuse or neglect of an elderly resident, immediately report the incident to the Florida Department of Children and Families Elder Abuse Hotline at 1-800-96ABUSE (1-800-962-2873).

Sources:

"Elder Abuse Reporting: Florida Resources." Florida Adult Services Program, a division of Florida Department of Children and Families.

"Elderly Abuse Statistics." www.statisticbrain.com. Oct 30, 2016.

Watrel, Steve. *The Caregiver's Guide: Choosing the Right Nursing Home in Florida and What to do if You Suspect Abuse or Neglect*. 2016.

DIGITAL TRENDS IN ELDER ABUSE

With advances in technology and countless social media platforms, nursing home abuse has now entered the digital age. While caregivers and families have used these tools as a source of support, communication, and much more, there is a downside to this explosion of mobile devices and social media. Unfortunately, too many vulnerable seniors have fallen victim to those who use these tools without ethical considerations or respect for others' rights. In increasing numbers, nursing home employees are sharing degrading and abusive photographs and videos of residents on social media.

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There have been at least 47 reported incidents since 2012 in which nursing home and assisted living employees shared compromising images of residents on social media networks like Facebook, Instagram, and Snapchat. According to government citation reports and court records, there are numerous cases nationwide in which assisted living facilities had circulated images of elderly residents naked, covered in feces, or even deceased. In July of 2015, two nurse's aides posted humiliating videos of an elderly resident sitting on a toilet and being asked about her sex life and if she smoked marijuana. Another video shows the same resident when one of the aides yells in her ear, waking her up. In January 2016, a nursing assistant admitted to taking a video of a 93-year-old woman with Alzheimer's disease sitting on her bed in a bra with no underwear or pants. She then shared the video on Snapchat with her friends. In March of 2016, a nursing assistant was fired after sharing a photo on Snapchat of "an elderly and incapacitated resident with his pants down and feces on his legs, shirt, and left hand" (Kerskie). Many of the known incidents have involved the use of Snapchat, a mobile social media application where photos or videos can be sent to others, appearing for a few moments and then disappearing. While the photo or video may disappear, the digital footprint does not; additionally, the recipient may screenshot the photo and then continue to share it with their friends.

Unfortunately, the legal system has not advanced as quickly as our technology, and the pervasive threat social media is posing to our nation's elderly population has left lawmakers scrambling for solutions to prevent further issues. As legislatures struggle to draw up new online abuse laws, members of Congress have enlisted the help of both Snapchat and Facebook, who say they are doing what they can to prevent abusive content from being published and shared on social media networks. Additionally, the U.S. Centers for Medicare and Medicaid Services has announced solid procedures for investigating allegations and disciplining non-compliant facilities. Many facilities have their own rules and policies for staff when it comes to cell phone and social media use, but, obviously, these can be difficult, if not impossible, to enforce. Ultimately, caregivers and family members must remain vigilant and attentive when it comes to the care of their loved ones.

Sources:

Banville, Laurence P. "Online Elder Abuse: Social Media Proves New Threat to Seniors." www.nursinghomelegalny.com. Sept 28, 2016.

Carter, Maria. "Nursing Home Workers are Abusing Patients and Posting the Humiliating Photos Online." www.countryliving.com. August 9, 2016.

Kerskie, Carrie. "Social Media Abuse in Nursing Homes." www.agingcare.com. Jan 6, 2017.