

# Abuse in Nursing Homes: Consumers Are Being Left in the Dark

Kathryn Hensiak  
*Northwestern University Law School*

Follow this and additional works at: <http://scholarship.law.marquette.edu/elders>



Part of the [Elder Law Commons](#)

---

### Repository Citation

Hensiak, Kathryn (2002) "Abuse in Nursing Homes: Consumers Are Being Left in the Dark," *Marquette Elder's Advisor*: Vol. 4: Iss. 2, Article 11.

Available at: <http://scholarship.law.marquette.edu/elders/vol4/iss2/11>

This Column is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Elder's Advisor by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

ON-LINE

# *Abuse in Nursing Homes: Consumers Are Being Left in The Dark*

*Horrific reports of physical and sexual abuse plague our nation's nursing homes. A key information resource for consumers, the federal Nursing Home Compare website, is failing to provide adequate information.*

*While government officials are making efforts to improve the site, consumers must be vigilant and protect family members in nursing home care.*

**By Kathryn Hensiak**

---

*Kathryn Hensiak, J.D., M.L.S., is a Research and Instructional Services Librarian at the Pritzker Legal Research Center at Northwestern University Law School.*

**E**lder abuse in nursing homes is a prevalent and extremely serious problem in our society. Placing a loved one in a nursing home is often a difficult and painful decision for family members. Typically, family members spend countless hours researching potential nursing homes using a variety of information resources, including the Internet.

Despite this careful planning and research, family members may be shocked to learn that nursing home residents are in serious danger of being abused by nursing home employees. Over thirty percent of nursing homes in the United States were cited for an abuse violation between January 1, 1999 and January 1, 2001.<sup>1</sup>

In addition to these alarming statistics, there is even worse news for family members. One of the most popular websites used by family members to research potential nursing homes is seriously flawed. As I will discuss later in this column,

the "Nursing Home Compare" site sponsored by the federal government omits substantial information about abuse violations occurring in nursing homes.

Despite all this bad news, there is some good news: Congress is taking the issue of elder abuse in nursing homes seriously, and several members of Congress have introduced various pieces of legislation to address the problem. In addition, efforts are being made to add more information to the Nursing Home Compare website. Nevertheless, family members, now more than ever, must make every attempt to gather information about prospective nursing homes prior to placing a loved one in such a facility.

In the final part of this column, I will discuss some tips on finding accurate information about nursing homes.

## **Report Shows Prevalence Of Abuse in Nursing Homes**

Unfortunately, allegations of physical and sexual abuse have

become routine in nursing homes. In many cases, the abuse inflicted upon residents results in serious injuries and even death.

Over the course of the past few months, there have been numerous accounts in the media of serious abuse in nursing homes.<sup>2</sup> Recent reports of abuse described in the media are indicative of a much larger and systemic problem in the approximately 17,000 nursing homes located in this country. Several reports issued by the United States Congress shed light on this growing crisis.<sup>3</sup>

In March 2002, the General Accounting Office (GAO) issued a disturbing report about physical and sexual abuse in nursing homes.<sup>4</sup> The report found that not enough is being done to prevent abuse of nursing home residents. According to the report, residents are not adequately protected from abusive employees.<sup>5</sup> Moreover, the report revealed that allegations of abuse are not reported and not investigated in a timely manner.

Specifically, the report found that nursing homes are failing to adequately screen prospective employees for prior histories of abuse. Although nursing homes are required by the Centers for Medicare and Medicaid Services (CMS)<sup>6</sup> to perform criminal background checks on prospective employees, those background checks are ineffective for several reasons. The background checks do not cover all nursing home employees, they are typically

only statewide, they are not completed prior to an employee's beginning employment, and the results of the background checks are not included in nurse aide registries.<sup>7</sup> As a result, many nursing homes may be hiring employees who have extensive criminal records and histories of abusive behavior.

In addition to inadequate criminal background checks, the report revealed that nurse aides are not adequately screened prior to employment because state registries of nurse aides contain incomplete information. This finding was particularly alarming because nurse aides are responsible for delivering most of the primary care functions to residents.

Federal law requires that states maintain nurse aide registries, and that nursing homes consult these registries prior to hiring a nurse aide.<sup>8</sup> These registries list individuals who have completed approved training and competency evaluation programs.<sup>9</sup> More important, if a state survey agency finds that a nurse aide is responsible for abuse, neglect, or theft, that information must also be included in the registry.<sup>10</sup>

It is alarming to consider that the registries do not contain complete information about nurse aides. In at least one state, for example, a nurse aide had documented allegations of abuse in her employment file, but this information was not included on the nurse aide registry website.<sup>11</sup> Another problem with the registry websites is that the information contained on each

state's site is particular to that state only.<sup>12</sup> In other words, if a nurse aide abuses a resident in Minnesota and then moves to Illinois, the Illinois nurse aide registry will not reflect that the nurse aide has a history of abuse.

Unless nursing homes take the time to check nurse aide registries in all fifty states, they may not discover that a prospective employee has a history of resident abuse. Currently, nursing homes are not required to check the nurse aide registries of other states.

Not only do some nursing homes fail to adequately protect residents from abusive employees, once the abuse occurs, some nursing homes do not report allegations of abuse to proper authorities in a timely manner. As a result, allegations of abuse are difficult to investigate and even more difficult to prosecute. Unlike other violent crimes involving citizens not in nursing homes, law enforcement officials are rarely asked to respond to abuse allegations occurring in nursing homes.<sup>13</sup>

In most situations, instead of reporting abuse to law enforcement authorities, allegations are reported to state survey agencies. State agencies have the authority to issue violations to nursing homes but they do not have the power to criminally prosecute abusive employees. To make matters worse, most allegations are reported well after the fact, further hindering the investigation of the abuse allegations.<sup>14</sup> Failing to timely report abuse allegations to law

enforcement authorities or state survey agencies makes it very difficult to prove allegations of abuse when they arise.<sup>15</sup> As a result, the health and safety of nursing home residents is gravely compromised.

### **Website Contains Incomplete Information**

Simply put, physical and sexual abuse of nursing home residents is a prevalent and serious problem. Consequently, consumers need reliable and complete information about nursing homes and employees. Unfortunately, reliable and complete information is difficult to obtain.

As noted earlier, the website relied on by many family members when researching nursing homes, Nursing Home Compare, is seriously flawed. As I will discuss in greater detail later, it does not contain critical information about abuse violations. The inadequacies of the Nursing Home Compare site illustrate an important point: Relying on information found on the Internet can be dangerous.

In 1998, the Department of Health and Human Services introduced the Nursing Home Compare website. Its purpose is "to provide detailed information about the performance of every Medicare and Medicaid certified nursing home in the country."<sup>16</sup> The site is accessible through the Medicare website (<http://www.medicare.gov>).

The Nursing Home Compare website has a database containing over 16,000 nursing homes searchable by state, county, city,

and zip code.<sup>17</sup> The database includes information about resident characteristics, staffing levels, and annual inspections by state survey agencies. Although it is impossible to know exactly how many family members depend on the Nursing Home Compare website for accurate information, statistics show that the site receives more than 100,000 visits every month.<sup>18</sup> Without a doubt, some of these visitors relied on the website when making decisions about nursing home care and believed that the information was complete and accurate.

Because it is likely that many consumers relied on the Nursing Home Compare website,<sup>19</sup> the conclusions of a recent government report are extremely troubling. The report found that 25,204 violations of federal health standards at nursing homes for the period from October 1, 2000 to December 31, 2001 were not reported on the Nursing Home Compare website.<sup>20</sup> The reason for this missing information is that complaint violations made to state survey agencies are not reported on the Nursing Home Compare site. The only violations listed on the Nursing Home Compare site are violations found during annual inspections by state survey agencies. This is problematic because most nursing homes have notice of annual inspections. As a result, unscrupulous nursing homes may take this opportunity to hide evidence of resident abuse.

Nursing home violations are classified in several different categories. The most serious viola-

tion is an "immediate jeopardy" violation. Immediate jeopardy violations are violations that cause, or have the potential to cause, death or serious injury to residents. Due to the flaws in reporting violations on the Nursing Home Compare website, approximately 1,138 immediate jeopardy violations were not reported on the Web site during the fifteen-month time period covered by the report.<sup>21</sup>

Similarly, the second most serious type of nursing home violation, "actual harm" violations, were also underreported on the Nursing Home Compare website. Actual harm violations may include failing to take steps to prevent accidents, abusing of residents, failing to prevent abuse of residents, failing to adequately treat pressure ulcers, and failing to provide adequate nutrition or hydration.<sup>22</sup> According to the report, 4,406 actual harm violations reported to state inspectors were not included on the website during the time period in question.<sup>23</sup>

In summary, the information found on the Nursing Home Compare website is unreliable and misleading. By excluding complaint violations reported to state officials and including only those violations found during annual inspections, the Nursing Home Compare Web site fails to list thousands of serious violations perpetrated against residents of nursing homes. Consumers searching the Nursing Home Compare website will not find information about any of these serious violations. Consequently, consumers should not depend on the Nursing

Home Compare website alone for information about nursing homes. (The final part of this column will offer some tips for consumers seeking information about potential nursing homes.)

### **Government Officials**

#### **Present Possible Solutions**

In an attempt to address the serious problem of abuse in nursing homes, legislators are introducing federal legislation and holding hearings on this issue. Simultaneously, CMS is taking steps to improve the information available for some nursing homes on the Nursing Home Compare website.

Several members of Congress have introduced legislation recently to combat the issue of abuse in nursing homes. For instance, Senator Herb Kohl introduced the Patient Abuse Prevention Act in June 2001.<sup>24</sup> The bill requires mandatory national background checks for nursing home employees and imposes a ban on hiring abusive employees. Nursing homes in violation of these provisions would be subject to criminal and civil penalties. The bill also requires that abusive employees be listed in the national health care fraud and abuse data collection program database. Legislation like the bill proposed by Senator Kohl would address some of the problems discussed earlier in this column, such as the inadequacies of current criminal background checks. The bill was referred to committee. (Unfortunately, no further action has been taken as of the date of writing this column.)

The legislation introduced by

Senator Kohl is one example of efforts being made by members of Congress to address the issue of abuse in nursing homes. The United States Senate Special Committee on Aging is also focusing on the issue of elder abuse in nursing homes. In March of 2002, the Special Committee on Aging held a hearing on protecting the elderly from physical and sexual abuse.<sup>25</sup> The hearing focused on the response of law enforcement officials, an issue dealt with in the GAO report discussed earlier.

In addition to the activities of Congress, administrators are also attempting to solve the problem of abuse in nursing homes. In an effort to provide better information to consumers, CMS is increasing the information available on the Nursing Home Compare website. In April of 2002, CMS launched a six-state public reporting pilot for nursing homes.<sup>26</sup> The states included in the pilot study are Florida, Colorado, Maryland, Ohio, Rhode Island, and Washington. CMS will provide data about nursing homes that will facilitate performance comparisons across nursing homes. The data will include the proportion of residents who have pressure ulcers, who are in physical restraints, who have lost too much weight, who are suffering pain, who have certain types of infections, and who need more help with daily activities.<sup>27</sup>

CMS intends for the data to be utilized by two audiences: Most important, families considering placing a loved one in a

nursing home will use the data during the course of their research. Second, nursing homes will be able to use the data to rate performance against that of other nursing homes. Ultimately, CMS hopes the information will lead to more competition among nursing homes and, as a result, the conditions in nursing homes will improve.

In addition to posting the information on the Nursing Home Compare website, CMS will place advertisements in major newspapers in the pilot states.<sup>28</sup> Even though the new data are incorporated into the Nursing Home Compare website, at this point in time, it is unclear whether this information will address the flaws of the Nursing Home Compare site discussed earlier. Also, the pilot program is available only in six states. No timeline exists for future states being added to the pilot program. Therefore, most visitors to the Nursing Home Compare website will not get the enhanced information.

### **Some Tips for Family Members**

Protecting residents from abusive nursing home employees is difficult. Moreover, as illustrated by the flaws with the Nursing Home Compare website, finding accurate and complete information about the track record of nursing homes is equally challenging. Nevertheless, consumers must have the most information available to them when making such an important decision.

Although there is no perfect

solution at this point in time, there are some tips that family members should keep in mind when researching potential nursing homes. According to the National Citizens' Coalition for Nursing Home Reform (NCC-NHR), consumers should follow certain steps to ensure that the quality of care of the nursing home is suitable for their loved ones.<sup>29</sup> First, consumers should take residents to visit prospective nursing homes. Consumers should visit as many nursing homes as possible. Visits should take place during non-peak times, such as the evening and on weekends, when staff and services may be reduced. (The federal government provides a good checklist to follow when visiting prospective nursing homes, available at <http://www.medicare.gov/Nursing/Checklist.pdf>.)

Another excellent tip is to ask for the opinions of others, such as physicians, community advocacy groups, current residents and their families and clergy members. Another important person to contact is the ombudsman in your state. The long-term care ombudsman program was created under the Older Americans Act.<sup>30</sup> Ombudsmen investigate and resolve conflicts and work to improve the quality of nursing home care.<sup>31</sup> Consumers should also inquire about state inspection reports from the ombudsman or from the nursing homes.<sup>32</sup>

Consumers should consult the Nursing Home Compare website with caution. If consumers live in a state that is

participating in the six-state pilot study by the CMS discussed earlier, they may get additional information about nursing homes in their particular states.

As the Nursing Home Compare website illustrates, consumers should never rely on websites alone to gather information about nursing homes. With that said, there are good websites on the Internet that pertain to nursing homes and elder care that consumers should consult—but only if they are verifying information found on the Internet with other reputable resources.<sup>33</sup>

### Conclusion

Physical and sexual abuse in nursing homes is a serious risk to nursing home residents. To lessen the risk that a nursing home employee may victimize a loved one, family members must have access to reliable and complete information about nursing homes.

Family members should be cautious when relying on information found on the Nursing Home Compare website because it contains incomplete information about abuse violations. Although the Internet is an excellent research tool in many circumstances, family members should not rely on it as an exclusive information resource.

Hopefully, the efforts of our lawmakers will result in less abuse in nursing homes and make more information available to consumers. Until then, consumers should be vigilant

and well informed regarding information that pertains to nursing homes.

---

### Endnotes

1. Minority Staff of Special Investigations Division, Committee on Government Reform, 107th Cong., *Abuse of Residents is a Major Problem in U.S. Nursing Homes*, at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_nursing\\_abuse\\_rep.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_nursing_abuse_rep.pdf) (July 30, 2001). Over 9,000 abuse violations were reported during this time period. In addition, over 2,500 of the abuse violations reported caused actual harm to residents or the violations placed residents in situations that could result in serious injury or death.
2. See, e.g., Robert Pear, *Unreported Abuse Found at Nursing Homes*, N.Y. TIMES, March 3, 2002, §1, at 25.
3. See United States General Accounting Office, *Nursing Homes: More Can Be Done to Protect Residents from Abuse*, (GAO-02-312 March 2002), available at <http://www.gao.gov>; Minority Staff of Special Investigations Division, Committee on Government Reform, 107th Cong., *Abuse of Residents is a Major Problem in U.S. Nursing Homes*, at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_nursing\\_abuse\\_rep.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_nursing_abuse_rep.pdf) (July 30, 2001). A recent report also detailed that nine out of ten nursing homes in the United States are seriously understaffed, probably exacerbating the problem of abuse of

- residents. *See also* Abt Associates, Inc., *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II Final Report*, at [http://www.house.gov/reform/min/inves\\_nursing/pdf\\_cms\\_report/pdf\\_cms\\_rep\\_contents.pdf](http://www.house.gov/reform/min/inves_nursing/pdf_cms_report/pdf_cms_rep_contents.pdf) (last visited May 8, 2002) (Report currently only available on Representative Henry Waxman's website, <http://www.house.gov/waxman>).
4. *See* United States General Accounting Office, *Nursing Homes: More Can Be Done to Protect Residents from Abuse*, (GAO-02-312 March 2002), available at <http://www.gao.gov>.
  5. *Id.* at 17.
  6. Formerly the Health Care Financing Administration (HCFA).
  7. UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 4, at 18-19. Nursing homes may request nationwide criminal background checks from the Federal Bureau of Investigation, but requests for these checks are inconsistent and not mandatory.
  8. *See* 42 U.S.C. § 1396r-(e)(2) (2002).
  9. Nurse aides may work up to four months while completing their training courses. *See* U.S. General Accounting Office, *supra* note 4, at 8.
  10. *Id.*
  11. *Id.* at 24.
  12. *Id.*
  13. *Id.* at 9.
  14. *Id.* at 10.
  15. *Id.* at 14.
  16. <http://www.medicare.gov/NHCompare/home.asp> (last visited May 8, 2002).
  17. Minority Staff of Special Investigations Division, Committee on Government Reform, 107th Cong., HHS 'Nursing Home Compare' Website Has Major Flaws, at [http://www.house.gov/reform/min/pdfs/pdf\\_inves/pdf\\_nursing\\_compare\\_rep.pdf](http://www.house.gov/reform/min/pdfs/pdf_inves/pdf_nursing_compare_rep.pdf) (February 21, 2002).
  18. *Id.*
  19. Many media reports refer to the Nursing Home Compare website. For examples, *see id.* at 1-2.
  20. *Id.* at 5.
  21. *Id.* During the time period in question, state inspectors found 1,923 immediate jeopardy violations. However, almost sixty percent of the violations were not found during annual inspections. Therefore, they are not included on the website.
  22. *Id.* at 6.
  23. *Id.* This represents forty-one percent of the total actual harm violations reported by state authorities.
  24. Patient Abuse Prevention Act, S. 1054, 107th Cong. (2001), available at <http://thomas.loc.gov>. For a more detailed discussion of criminal background checks for nursing home employees, *see* Jennifer Marciano, *Mandatory Criminal Background Checks of Those Caring for Elders: Preventing and Eliminating Abuse in Nursing Homes*, 9 ELDER L. J. 203 (2001). Some states are also introducing legislation to address abuse in nursing homes. *See, e.g.*, Virginia Young, *Nursing Homes Decry Bill Seeking to Curb Abuse; They Call It Unrealistic, Vague*, ST. LOUIS POST-DISPATCH, May 1, 2002, at B1.
  25. *Safeguarding our Seniors: Protecting the Elderly from Physical and Sexual Abuse in Nursing Homes: Hearing Before the Senate Special Comm. on Aging*, 107th Cong. available at <http://aging.senate.gov/hr78.htm> (March 4, 2002).
  26. *See* <http://cms.hhs.gov/providers/nursinghomes/nhi/> (last visited May 8, 2002).
  27. *See* Robert Pear, *U.S. Begins Issuing Data on Individual Nursing Homes' Quality of Care*, N.Y. TIMES, April 25, 2002, at A26.
  28. *See* Janelle Carter, *Government to Post Guide to Selecting Nursing Homes; Six-State Pilot Program to Offer Information for Consumers to Compare*, MILWAUKEE JOURNAL SENTINEL, April 21, 2002, at 10A.
  29. *See* National Citizens' Coalition for Nursing Home Reform, *A Consumer Guide to Choosing a Nursing Home*, at [http://www.nursinghomeaction.com/public/50\\_156\\_455.cfm](http://www.nursinghomeaction.com/public/50_156_455.cfm) (last vis-

- ited April 24, 2002).
30. See 42 U.S.C. § 3001 et seq. (2002).
31. See the website for Wisconsin's ombudsman *available at* <http://www.dhfs.state.wi.us/aging/BOALTC/LTCOMBUP.htm>(last visited May 8, 2002).
32. To find the Ombudsmen in your state, *see* National Long Term Care Ombudsman Resource Center *at* [http://www.ltcombudsmen.org/static\\_pages/ombudsmen.cfm](http://www.ltcombudsmen.org/static_pages/ombudsmen.cfm) (last visited April 23, 2002).
33. For an excellent summary of websites pertaining to nursing homes and elder abuse, *see* Robin C. Shard, *On-Line: Legal Resources on Elder Abuse in the Institutional Setting*, ELDER'S ADVISOR, Fall 2000, at 81, and Robin C. Shard, *On-Line: Internet Resources Related to Nursing Care Facilities*, ELDER'S ADVISOR, Winter 2001, at 110.