The Myths and Truths of Nursing Homes and Assisted Living

As with all of life, it is sometimes hard to know what is really true. “Eat your carrots, they’re good for your eyes.” Not true, but we all heard it and probably many of us have said it. Let’s hear some of the myths and then the truth about nursing home and assisted living rights. To help you with the choice of a nursing home, check out the state’s site FloridaHealthFinder.gov: http://www.floridahealthfinder.gov/reports-guides/NursingHomesFL.aspx.

**Myth:** You have no privacy and no right of privacy in a nursing home.

**Reality:** Nursing home facilities are required by Florida law to adopt and make public a statement of the rights and responsibilities of the residents and are legally bound to treat such residents in accordance with that statement. You must be permitted privacy in treatment and in caring for personal needs. You are allowed private and uncensored communication. Furthermore, a nursing home must provide a private space for resident or family councils because the right to organize and participate in resident groups is protected by the law.

**Myth:** Only staff can determine the care you receive.

**Reality:** That is not true. Residents and family have the right to participate in developing a care plan. Residents have the right to refuse medication and treatment and to know the consequences. Residents have a right to be informed of medical condition(s) and proposed treatment and/or medication and residents and their family are allowed participation in planning a course of treatment. Many residents and their families are unaware of this and, as a result, they remain silent and give up that right.

**Myth:** The nursing home can control a resident’s finances and not let the resident know what he has or what he is paying for.

**Reality:** A resident is permitted by law to manage his or her own financial affairs, subject to guardianship and competency issues as determined by court order. A quarterly accounting should be furnished to each resident or legal representative. A nursing home may not lawfully just take over personal finances from a patient and a patient’s family.
**Myth:** Medicaid does not pay for the nursing home service you may want.

**Reality:** Medicaid residents are entitled to the same service as other residents. However, for Medicaid to pay for a nursing home in Florida, an assessment is required and that level of services must be determined to be medically necessary according to standards set pursuant to the law. Comprehensive Assessment and Review for Long-Term Care Services (CARES) is the State of Florida’s screening program for long-term care applicants. CARES assessments are done by the Florida Department of Elder Affairs. A representative will interview the patient and ask about the patient’s ability to function independently, the level of help needed and all current medical conditions and the prognosis. A CARES assessment is required to show that a patient requires the level of care necessary to qualify for Florida’s managed long-term care programs. The income and financial resource requirements must also be met to qualify for Medicaid.

**Myth:** They can stop a resident from worshiping as he or she chooses.

**Reality:** Residents are permitted by law to participate in social, religious, and community activities that do not interfere with the rights of others. What is interference with the rights of others sometimes can be hard to determine, but by and large, worship is a highly respected and protected right. A resident’s religious liberties must be respected.

**Myth:** You need to hire private help.

**Reality:** A nursing home must provide all necessary care. That is not without limitations, but the law requires that a resident receive adequate and appropriate health care, protective and support services within established and recognized standards.

**Myth:** Restraints are required to prevent the resident from wandering away.

**Reality:** Restraints cannot be used for the nursing home's convenience or as a form of discipline. A resident’s civil liberties, including the freedom from restraint must be respected, however, restraint may be determined to be medically necessary in limited circumstances. Lack of restraint does not extend to unlocked exit doors from the nursing home. Restrictions on leaving the facility are typically necessary and are permissible.
Myth: Family visiting hours are restricted.

Reality: Family members can visit at any time of day or night. The law allows visitation by any individual providing health, social, legal, or other services, although again the rights of other residents may have to be balanced into the process of accommodating family wishes. The resident may revoke any family member’s rights of access at any time.

Myth: A resident can be easily and rapidly discharged.

- Reality: A nursing home must give residents 30 days written notice prior to discharge. Federal law restricts discharge except for a limited number of reasons stated in the applicable laws. This also is a right that is often neglected or overlooked because nursing home residents and their families are unaware of their rights. Florida law allows a resident to be transferred or discharged only for medical reasons, the welfare of other residents or nonpayment of a bill.

Myth: You must pay any extra charges set by the nursing home for services.

Reality: A nursing home may only require extra charges authorized in the admission agreement. The law requires that the resident (or guardian) be fully informed, in writing and orally, of services available at the facility and of related charges for such services. A careful reading of the admission agreement is very important.

Myth: Residents can be moved around at any time and for any reason.

Reality: Residents are entitled to reasonable notification prior to room change. This is a right that is often neglected or overlooked because nursing home residents and their families are unaware of their rights.

Myth: Residents can be evicted because they are difficult or refuse medical treatment.

Reality: Being difficult or refusing treatment does not fall within one of the permitted grounds for eviction under federal law. Residents are to receive a thirty (30) day written notice of discharge or relocation, and challenge such notice.
Every person living in any form of assisted living, ACLF, nursing home or residential facility needs to be aware of their rights. Florida law has created a Bill of Rights for nursing home and a separate Bill of Rights for assisted living residents. See http://ombudsman.myflorida.com/ResidentsRights.php for a full expression of those rights.