NATIONAL MEDICAL MALPRACTICE
ADVOCACY ASSOCIATION

Patient Harm & Medical Malpractice Advocacy Referral Guide

TEXAS EDITION

A practical triage and referral resource for patients, families, advocates, and community partners.

The advocacy principle
The first question is not “Is this malpractice?” The first questions are: Is the patient safe right now? Is there a deadline or discharge pending? Who has the authority to intervene?

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How to Use This Guide

This guide helps identify the most appropriate first response when a patient or family reports medical harm, nursing-home neglect, unsafe discharge, insurance termination, or another healthcare-related problem.

Not every serious healthcare complaint begins as a medical-malpractice lawsuit. In many situations, the first priority is protecting the patient, stopping an unsafe action, preserving evidence, or using an administrative appeal process.

Important disclaimer
This guide provides general advocacy and referral information. It is not legal advice, does not create an attorney-client relationship, and does not determine whether malpractice or another legal violation occurred. Laws, appeal procedures, deadlines, and agency processes can change. Patients and families should obtain advice from a qualified attorney or appropriate government agency when legal rights or deadlines are involved.

NMMAA Mission Alignment

NMMAA supports people affected by medical harm through education, advocacy, legal connections, and community support. This referral framework is designed to help advocates move a caller toward the resource most capable of addressing the immediate problem.

Use this guide in three stages:

1. Triage safety and urgency.
2. Identify the correct regulatory, administrative, legal, or clinical pathway.
3. Preserve records and refer for legal evaluation when injury, causation, damages, or deadlines may be involved.

1. Immediate Safety Triage

Treat the matter as urgent when any of the following are present:

- The patient is about to be discharged to an unsafe or inappropriate setting.
- The patient cannot walk, transfer, toilet, eat, manage medications, or perform activities of daily living without assistance.
- Chemotherapy, radiation, dialysis, oxygen, medication, wound care, or another necessary treatment may be interrupted.
- The patient appears medically unstable or has had a significant change in condition.
- Necessary equipment, medication, transportation, or follow-up care has not been arranged.
- There is suspected abuse, neglect, exploitation, abandonment, or serious understaffing.

RED - Immediate

Patient may be physically unsafe, homeless, abandoned, medically unstable, or losing essential treatment. Focus first on safety, documentation, and an authority capable of intervening.

First contacts may include:

- Treating physician or oncology/specialty team
- Hospital or skilled nursing facility administrator
- Director of Nursing
- Case manager, social worker, or discharge planner
- Patient's health plan
- Long-Term Care Ombudsman for nursing-facility residents
- Texas Health and Human Services regulatory complaint system
- Emergency medical services when there is an acute medical emergency

Advocate's 10-Minute Intake

Question	Record
1. Patient's age and current location	_____
2. Primary medical condition and functional limitations	_____
3. What happened and when	_____
4. Facility/provider involved	_____
5. Whether the patient is safe right now	_____
6. Whether a discharge, transfer, or treatment interruption is pending	_____
7. Whether there is a written notice and deadline	_____
8. Whether injury, deterioration, hospitalization, or death occurred	_____
9. Current insurance / Medicare / Medicaid status	_____
10. What outcome the caller wants	_____

2. Nursing Home / Skilled Nursing Facility Discharge

A proposed SNF discharge can involve resident rights, Medicare coverage, Medicaid, placement, medical safety, or potential negligence. These issues should be separated so the family uses the correct appeal or complaint process.

Common warning signs

- The resident is suddenly told to leave.
- A dependent resident is threatened with discharge to a homeless shelter.
- The family is told to pick the resident up immediately.
- The facility says it can no longer meet the resident's needs.
- Medicare or insurance coverage is ending and the family is told this automatically means immediate discharge.
- The proposed receiving location cannot meet the resident's medical or functional needs.

Federal SNF discharge protections - key concepts

- A Medicare/Medicaid-certified nursing facility may transfer or discharge a resident only for specified reasons under federal law.
- The transfer or discharge must be documented in the medical record, and required information must be communicated to the receiving provider.
- Written notice generally must state the reason, effective date, destination, and appeal information and must be copied to the Long-Term Care Ombudsman.
- The facility must provide sufficient preparation and orientation to ensure a safe and orderly transfer or discharge.
- The usual 30-day notice rule has exceptions, including when the resident has lived in the facility fewer than 30 days; in those circumstances notice must be provided as soon as practicable.

Do not reduce the case to “30 days' notice.”
When a resident has been in the facility fewer than 30 days, the stronger immediate questions are whether there is a valid basis for discharge, proper written notice, medical documentation, an identified destination, appeal rights, and a safe transition plan.

Texas First Referral

Texas Long-Term Care Ombudsman
Phone: 800-252-2412
Email: ltc.ombudsman@hhs.texas.gov
Role: Helps nursing-home and assisted-living residents address rights, safety, quality-of-care, and transfer/discharge concerns.

Texas Regulatory Complaint

Texas Health and Human Services - Complaint and Incident Intake
Phone: 800-458-9858
Use for complaints involving nursing-facility care, treatment, abuse, neglect, unsafe conditions, and regulatory compliance.

Documents to request immediately

- Written discharge/transfer notice

- Reason for discharge and effective date
- Exact proposed destination
- Appeal/hearing instructions
- Physician documentation supporting the discharge
- Care plan and discharge plan
- Nursing notes and physician orders
- PT/OT and ADL assessments
- Medication administration records
- Records showing attempts to meet the resident's needs

3. Medicare Coverage, Hospital Discharge & Benefit Appeals

Medicare SNF coverage ending

A coverage termination and a facility discharge are related but not identical. If Medicare-covered skilled services are ending, ask whether the resident received a Notice of Medicare Non-Coverage and follow the appeal instructions on that notice immediately.

- Ask who made the coverage decision.
- Get the written termination notice - do not rely only on a verbal statement.
- Identify the appeal deadline and whether a fast appeal is available.
- Document ongoing skilled-care needs and functional limitations.
- Do not assume 'Medicare will not pay' automatically means the facility can discharge the resident immediately without satisfying applicable discharge requirements.

Potentially unsafe hospital discharge

- Ask for the hospital case manager, social worker, attending physician, patient advocate/patient relations office, and discharge planner.
- State clearly: “We are objecting to this discharge because we do not believe there is a safe discharge plan.”
- Ask that the objection and the patient's functional/medical limitations be documented in the medical record.
- Request the proposed post-discharge plan, medications, equipment, transportation, follow-up appointments, and caregiver requirements.
- For Medicare beneficiaries, ask whether expedited appeal rights apply.

Clinical documentation can be decisive

When the patient has cancer, severe mobility limitations, cognitive impairment, wound-care needs, oxygen requirements, or other major care needs, ask the treating team to document the level of care required and whether the proposed discharge environment can safely meet those needs.

4. Nursing-Home Neglect & Possible Medical Malpractice

Nursing-home neglect / abuse indicators

- Falls or unexplained injuries
- Pressure injuries
- Medication errors
- Malnutrition or dehydration
- Failure to provide hygiene or repositioning
- Infection or delayed treatment
- Failure to respond to a change in condition
- Unsafe discharge that causes injury or interrupts treatment
- Significant deterioration, hospitalization, or death potentially associated with facility conduct

Possible medical malpractice - initial screen

- Failure or delay in diagnosis
- Surgical or procedural error
- Medication or anesthesia error
- Failure to treat or monitor
- Misdiagnosis
- Failure to communicate significant test results
- Preventable treatment-related injury
- Wrongful death potentially related to medical care

Questions before attorney referral

4. What exactly happened?
5. When did it happen?
6. Who provided the treatment?
7. What injury or deterioration resulted?
8. What additional treatment was required?
9. Was the patient hospitalized or disabled?
10. Is the injury permanent?
11. Did another clinician identify a possible error?
12. Are medical records available?
13. Are any legal or notice deadlines approaching?

Advocacy language

Avoid telling a family that malpractice definitely occurred before qualified legal and medical review. A safer description is: “Potential medical malpractice or healthcare negligence requiring attorney review.”

5. Additional Referral Pathways

Physician complaint

When the concern involves physician conduct, competency, boundary issues, or licensing concerns, consider the appropriate Texas professional licensing authority. A licensing complaint does not replace a civil malpractice claim.

Nursing complaint

Medication administration, monitoring, documentation, abandonment, or scope-of-practice concerns may warrant facility grievance, regulatory/licensing review, and attorney evaluation when significant injury occurred.

Insurance denial

Identify whether the dispute concerns medical necessity, prior authorization, medication, rehabilitation, home health, equipment, or termination of services. Obtain the actual denial notice and appeal deadline.

Medicaid / state benefit issue

Obtain the adverse-action notice and identify the fair-hearing or appeal deadline. Medicaid eligibility, long-term-care benefits, and facility residency issues may overlap but should be tracked separately.

Legal help when malpractice counsel declines

A declined malpractice case may still involve elder law, long-term-care law, disability rights, Medicare/Medicaid law, insurance law, civil rights, legal aid, or regulatory remedies.

Houston-area civil legal resource

Lone Star Legal Aid - Houston Main Office
1415 Fannin Street, Houston, Texas 77002
713-652-0077 | 800-733-8394
Civil legal assistance may be available to financially eligible individuals; eligibility and case acceptance requirements apply.

6. NMMAA Referral Decision Tree

Triage Question	Answer	Next Direction
Is the patient unsafe right now?	YES	Safety first: treating team / facility leadership / emergency care if clinically necessary. For SNF residents, add Ombudsman + HHSC when appropriate.
Is discharge or transfer pending?	YES	Get the written notice, deadline, reason, destination, appeal rights, and medical/discharge-plan documentation.
Is Medicare or insurance ending?	YES	Obtain the written coverage notice and use the stated appeal or fast-appeal process.
Is abuse or neglect suspected?	YES	Preserve evidence and use the appropriate regulatory/ombudsman pathway; consider legal review if injury occurred.
Did a medical error cause significant injury?	POSSIBLY	Collect records and refer to a qualified medical-malpractice or nursing-home negligence attorney.
No attorney will accept the case?	YES	Re-screen the problem for elder law, disability rights, benefits, insurance, civil rights, legal aid, or regulatory remedies.

Core NMMAA referral principle

Match the caller to the authority that can address the immediate problem. Malpractice litigation is one pathway - not the only pathway.

7. First 24 Hours - Unsafe SNF Discharge

Use this rapid-response sequence when a medically fragile resident is threatened with an involuntary or unsafe SNF discharge.

1. Object in writing: State that the resident/family objects to the proposed discharge and believes the proposed plan is unsafe.

2. Request the notice: Ask for the written reason, effective date, destination, medical basis, appeal instructions, and Ombudsman information.

3. Call the Ombudsman: Texas Long-Term Care Ombudsman: 800-252-2412.

4. File a regulatory complaint when appropriate: Texas HHSC Complaint and Incident Intake: 800-458-9858.

5. Contact the treating team: Ask the physician, oncology team, nurse navigator, case manager, or social worker to document current treatment and care needs.

6. Preserve evidence: Save notices, emails, texts, voicemails, care plans, treatment schedules, ADL assessments, medication lists, and names/times of every conversation.

7. Appeal promptly: Use the appeal instructions on the written notice or coverage termination document; deadlines can be short.

8. Screen for legal injury: After immediate safety is addressed, assess whether conduct caused injury, treatment interruption, deterioration, hospitalization, or other damages requiring attorney review.

Do not sign agreement language casually

Families should read discharge paperwork carefully and should not sign a statement saying they agree with a discharge plan when they do not agree. When legal rights are unclear, obtain legal advice.

8. Record Preservation Checklist

- ☐ Medical records
- ☐ Medicare or insurance notices
- ☐ Medication administration records
- ☐ Nursing notes
- ☐ ADL / functional assessments
- ☐ Text messages
- ☐ Voicemails
- ☐ Dates and times of conversations
- ☐ Insurance correspondence
- ☐ Timeline of events
- ☐ Discharge / transfer notices
- ☐ Care plans and discharge plans
- ☐ Physician orders
- ☐ PT/OT evaluations
- ☐ Photographs
- ☐ Emails
- ☐ Names and titles of staff
- ☐ Billing records
- ☐ Witness names
- ☐ Treatment schedules and appointment records

Advocate case-note minimum

Record what the caller said, what documents were reviewed, what referrals were provided, any deadlines identified, and whether the caller was advised that NMMAA is providing advocacy/referral information rather than legal representation.

9. Authoritative Sources & Verification

This Texas edition was prepared using current official federal and Texas sources and should be periodically reviewed for changes.

42 CFR § 483.15 - Admission, transfer, and discharge rights
Electronic Code of Federal Regulations (eCFR)
ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483/subpart-B/section-483.15

42 CFR § 483.21 - Comprehensive person-centered care planning
Electronic Code of Federal Regulations (eCFR)
ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483/subpart-B/section-483.21

Texas Long-Term Care Ombudsman
Texas Health and Human Services
hhs.texas.gov / ltco.texas.gov

Complaint and Incident Intake
Texas Health and Human Services
hhs.texas.gov/contact/complaints-appeals/complaint-incident-intake

NMMAA mission and public resources
National Medical Malpractice Advocacy Association
nmmaa.org

Website publishing recommendation
For nmmaa.org, publish this guide as a downloadable PDF and consider a shorter web page titled “Where Do I Go for Help?” that routes visitors to Unsafe Discharge, Nursing-Home Neglect, Medical Malpractice, Medicare/Insurance Appeals, and Other Patient-Rights concerns.

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