



# In the Literature

## TWENTY COMMON NURSING HOME PROBLEMS AND THE LAWS TO RESOLVE THEM

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The average consumer knows much more about cars or apartments than he does about nursing homes. Most people, for example, know that a landlord cannot legally evict a tenant within 48 hours because she is too “difficult.” But does a nursing home resident who is told the same thing know her legal rights?

Far too frequently, nursing homes employ policies affecting resident care, admission, reimbursement, and eviction that violate the federal Nursing Home Reform Law. But because many nursing home residents and their family members are unaware of their rights, they fall victim to these illegal practices. In “[Twenty Common Nursing Home Problems and the Laws to Resolve Them](#),” (*Clearinghouse Review Journal of Poverty Law and Policy*, Jan./Feb. 2006), Eric Carlson, J.D., an attorney with the National Senior Citizens Law Center, addresses problems facing nursing home residents, ranging from feeding-tube usage to financial responsibilities, and explains the laws to resolve them. The article is adapted from a December 2005 consumer guide, available from the National Senior Citizens Law Center at [http://www.nsclc.org/news/06/20comm\\_nhprob.htm](http://www.nsclc.org/news/06/20comm_nhprob.htm), and written with support from The Commonwealth Fund.

### Problems and Resolutions

*Patient-centered care.* Nursing home residents and family members have more power than they may realize to determine the kind of care they receive, Carlson writes. Federal law allows patients and families to play a role in developing a care plan and nursing home staff to make reasonable

adjustments to honor patients’ preferences. Restraints and feeding tubes can only be used as last resorts, and mood drugs must be prescribed for treatment of specific conditions—not to make treatment more convenient for nursing home staff. Residents and caretakers should recognize that nursing home staff members may try to limit the amount of care they provide or use methods to make workers’, not residents’, lives easier, Carlson warns.

*Admission.* Some nursing homes also may try to lure family members into taking financial responsibility for the resident’s care as a condition of admission, Carlson says. During the admission process, a nursing home may ask a family member to sign as a “responsible party” without explaining the term. The family member may think she is serving as an emergency contact, but the contract’s small print reveals the responsible party is liable for expenses. Family members need to know, Carlson says, that federal law prohibits a nursing home from requiring a family member to take up the financial burden of care. Family members should not hesitate to refuse signing such a provision, Carlson suggests, particularly if the resident is already occupying his room.

*Medicare.* Although nursing home residents and family members may think Medicare is a comprehensive health insurance program, it only allows for limited reimbursement for nursing home care. Often, payment depends on a link to hospital care, and is limited to situations in which residents enter the nursing home within 30 days after a hospital stay of at least three nights.

In addition, Medicare will not pay for custodial care, such as medication administration. Instead, Medicare kicks in only if the resident needs skilled nursing or rehabilitation services. If the nursing home decides it will not bill Medicare for the resident's care, it must give the resident written notice. However, residents are not bound by these decisions and can insist the facility submit a bill to Medicare, Carlson says.

*Medicaid.* While nursing homes rely on Medicaid reimbursement for half of their revenues, Medicaid tends to pay lower rates than do private payers or Medicare. As a result, Carlson says, nursing homes may try to provide second-class treatment to Medicaid recipients. But federal law prohibits discrimination based on Medicaid status. Under the Nursing Home Reform law, nursing homes "must establish and maintain identical policies and practices regarding transfer, discharge and the provision of services under the State [Medicaid] plan for all individuals regardless of source of payment."

*Eviction.* Because the demand for nursing home beds can outstrip supply, facilities may try to evict residents they deem difficult. Eviction, says Carlson, is only allowed for six reasons:

- Failure to pay.
- A resident no longer needs nursing home care.
- A resident's needs cannot be met in a nursing home.
- A resident is endangering others' safety.
- A resident is endangering others' health.
- The facility is going out of business.

The facility must give written notice of the eviction to the resident usually within 30 days of the discharge, and provide facts supporting it. The notice must include telephone numbers of the nursing home inspection and licensing authorities and instructions about how to appeal, Carlson says.

### Nursing Home Myths and Realities

Myth	Reality
Medicaid does not pay for the service you want.	Medicaid residents are entitled to the same service as other residents.
Only staff can determine the care you receive.	Residents and family have the right to participate in developing a care plan.
Staff cannot accommodate individual schedules.	A nursing home must make reasonable adjustments to honor residents' needs and preferences.
You need to hire private help.	A nursing home must provide all necessary care.
Restraints are required to prevent the resident from wandering away.	Restraints cannot be used for the nursing home's convenience or as a form of discipline.
Family visiting hours are restricted.	Family members can visit at any time of day or night.
Therapy must be discontinued because the resident is not progressing.	Therapy may be appropriate even if resident is not progressing; Medicare may pay even without current progress.
You must pay any amount set by the nursing home for extra charges.	A nursing home may only require extra charges authorized in the admission agreement.
The nursing home has no available space for residents or family members to meet.	A nursing home must provide a private space for resident or family councils.
The resident can be evicted because he or she is difficult or is refusing medical treatment.	Being difficult or refusing treatment does not justify eviction.

Source: Adapted from E. Carlson, "Twenty Common Nursing Home Problems and the Laws to Resolve Them," *Clearinghouse Review Journal of Poverty Law and Policy*, Jan./Feb. 2006 39(9-10):519-33.