



Legal Rights of Nursing Home Residents

Consumer Pamphlet Series



State Bar
of Georgia

The State Bar of Georgia has provided this pamphlet to inform people about some of their legal rights regarding nursing home residency. It explains what you need to know before signing a nursing home admissions agreement, what your rights are as a nursing home resident and provides a list of agencies to contact for any assistance or with any questions or concerns you may have.

Some Helpful Terms to Know

The process of entering a nursing home facility can be somewhat confusing. Here is a list of terms that may help make the process a little clearer.

- **Legal guardian.** A person who, pursuant to a court-issued guardianship order, has the right and the obligation to make decisions for an incompetent person. Under Georgia law, a person is considered competent unless a probate court judge has found him or her to be incapable of handling his or her own affairs. The scope and duration of a legal guardianship is determined by a judge.
- **Long-term care ombudsman.** An advocate for nursing home and assisted living residents. Though ombudsmen can help protect residents' rights by investigating complaints and working to resolve problems facing residents in nursing homes and assisted living facilities, these advocates do not regulate the facilities. The services of an ombudsman are free of charge and matters are kept confidential, though complaints may be made anonymously.
- **Methods of payment.** Private pay, Medicare and Medicaid are the most common forms of payment for nursing home care.
- **Private pay.** A resident's own resources, family resources or private insurance.
- **Medicare.** A government insurance program that pays for skilled care for a short period of time.
- **Medicaid.** A government insurance program for individuals with limited income. Medicaid will pay for nursing home care for financially eligible residents. Often when an individual enters a nursing home as a private pay resident, he or she can become eligible to receive Medicaid assistance once his or her resources have been exhausted. While many nursing homes accept Medicaid, not all of them do.
- **Power of attorney.** A document that grants certain specified powers from the person granting the power

of attorney (called the principal) to an agent. The delegation of power can be for a specified amount of time (i.e., when the principal is undergoing a medical procedure or is out of the country), or for a longer duration. The scope and duration of the power of attorney is determined by the principal.

- **Advance directive for health care.** A legal document delegating to an agent the power to make specific health care decisions on behalf of the principal when the principal is not able to make or communicate such decisions.
- **Financial power of attorney.** A legal document delegating to an agent the power to make specific financial decisions for the principal. Depending on the language of this particular power of attorney, the agent may have the authority to act when the principal is also able to act.
- **Springing power of attorney.** The delegation of power that is triggered by some specific event or occurrence.

The Admissions Agreement

A nursing home admission often follows an unexpected, sudden and debilitating illness. If you or a loved one is in need of nursing home care, you may be desperate to find placement in a facility as quickly as possible. However, the decision to enter a nursing home facility should be made with great care and attention to the admissions agreement. If the contract is not thoroughly reviewed, residents and their loved ones may end up ignoring important provisions or agreeing to illegal terms.

It is of utmost importance that admissions agreements are read and understood before they are signed. You have the right to take the agreement home and review it on your own. You may wish to have an attorney review it as well. You also have the right to ask the facility to make changes to the contract before signing it, though the nursing home is not required to agree to your suggested modifications. Before you sign the contract, make sure that all the terms agreed on by you and the facility are included. Also, be sure to obtain a copy of the signed documents for your records.

The laws governing admissions contracts depend on the type of payment a facility accepts. Facilities accepting Medicaid or Medicare payments for their residents are governed by federal and state laws. If a facility does not participate in Medicaid or Medicare, only state law ap-

plies. You should find out whether the facilities you are considering are Medicaid and Medicare participants. It is also important to note that a resident does not have to leave the nursing home once his or her Medicare benefits have been exhausted. Residents are federally protected from discrimination based on methods of payment. In fact, nursing homes must inform each resident who is entitled to Medicaid benefits which services are paid for by Medicaid and how a resident can apply for these benefits. This information must be given to the resident in writing either at the time of admission or at the time when the resident becomes Medicaid-eligible.

Duration of Stay Agreements

Georgia nursing homes can give preference to an applicant who is able to pay privately over an applicant who is Medicaid eligible. However, federal law prohibits nursing homes from doing any of the following:

- requiring at admission that residents waive their rights to Medicare or Medicaid
- requiring oral or written promises that residents are not eligible for Medicare or Medicaid, or that they will not apply for those benefits
- requiring residents to pay the facility from private funds for a certain time period before applying for Medicaid

Responsible Parties and Guarantees of Payment

Federal law bars nursing homes from requiring payment guarantees from third parties (i.e., anyone other than the resident) as conditions of admission, expedited admission or continued stay. Facilities can require third-party payment guarantees for services not covered by Medicaid.

Personal Needs Allowance Under Medicaid

Residents who receive Medicaid are required to contribute most—but not all—of their income toward the cost of their nursing home care. They are allowed to keep \$50 (\$100 for married couples) of their monthly income for clothing, toiletries, haircuts, personal phone calls and other personal needs. For example, if a resident receives a monthly income of \$600 from Social Security, that resident may keep \$50 for personal needs, while the remaining \$550 is paid to the nursing home. Medicaid then pays the balance of the cost of monthly care.

Transfer and Discharge

State regulations require that, unless an emergency situation exists, all nursing homes must pursue all reasonable alternatives prior to initiating transfers or discharges of residents. Still, nursing home facilities may transfer or discharge resident against their wishes in the following circumstances:

- the transfer or discharge is necessary for the resident's welfare and the failure to do so will result in the injury or illness of the resident or others
- there has been non-payment of allowable charges
- the resident no longer requires the level of care that is being provided
- the facility cannot meet the resident's needs

A resident's change in status from private pay to Medicaid does not constitute a non-payment of allowable charges in a Medicaid-participating facility. If a resident is eligible for Medicaid, Medicaid will retroactively reimburse the nursing home for up to three months prior to the month of application. An admission agreement allowing for the involuntary discharge upon becoming Medicaid eligible is illegal and unenforceable.

As long as a resident's displacement is not an emergency, a nursing home is required to provide a written notice to the resident, the resident's representative and the resident's physician 30 days prior to the proposed date of transfer or discharge, regardless of the admission contract terms.

A transfer or discharge notice must contain the following information:

- the reason for the transfer or discharge
- the effective date of the transfer or discharge
- the location to which the resident is being transferred or discharged
- a statement that the resident has the right to appeal the proposed action to the state
- the name, address and telephone number of the state long-term care ombudsman;
- for residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals

If a resident disagrees with a notice of transfer or discharge, the resident should immediately request a hearing. This will protect the resident's right to continue to receive

services while the appeal is pending. Also, the resident should consult with one of the resources listed at the end of this pamphlet as soon as possible.

Bed-Hold Policies

Medicaid-participating facilities must provide written notice of the state bed-hold policy to residents and family members prior to hospital transfers or therapeutic leave. In Georgia, Medicaid will pay for a hold on a resident's bed during the resident's absence for up to seven days. Family members or others may arrange for the nursing home to hold the bed for a longer period of time. The facility may charge a mutually agreed-upon rate that does not exceed the total allowable per diem billing rate that the facility would have been paid had the resident been in the facility.

Requiring Payments for Services Included in Medicaid or Medicare Programs

For Medicaid and Medicare-covered residents, expenses included in the approved reimbursement rate for that facility are covered. These goods and services must be provided to the resident at no additional charge. These services include, but are not limited to, nursing services, routine personal hygiene items and services and medically related social services.

If an admission agreement requires payment for the above-mentioned services, that provision is unenforceable. Any list of covered services in an admissions contract should be reviewed carefully. Nursing home facilities may offer additional services not included in the Medicaid or Medicare reimbursement rates, provided that the facilities give residents proper notice of the availability and the cost. Facilities are not permitted to require payment for additional services as conditions for admission or continued stays.

Contributions to Facilities

State law and regulations prohibit facilities from requiring contributions of any kind from residents.

Residents' Rights

Georgia law provides for the rights of residents concerning admission, transfer, discharge and care in nursing home facilities. The state laws also provide remedies when those rights have been violated. These rights include:

- the right to adequate and appropriate care and services without discrimination in the quality of service on the basis of age, gender, race, disability, religion, sexual orientation, national origin, marital status or source of payment for services

- the right to seek enforcement of a resident's right without punishment, retaliation or harassment
- the right to exercise constitutional rights including, but not limited to, the right to vote
- the right to enjoy one's own privacy (i.e., the resident can close doors and draw curtains)
- the right to respect privacy in provision of personal services
- the right to practice religious beliefs, as well as the right to abstain from religious beliefs or practices
- the right to be free from abuse, neglect, exploitation and chemical and physical restraints
- the right to have one's own personal property
- the right to send and receive mail unopened
- the right to access a telephone
- the right to manage one's own financial affairs
- the right to refuse medical and dental treatment
- the right to participate in one's own care plan
- the right to access one's own records
- the right to voluntarily transfer or discharge oneself
- the right to access an ombudsman
- the right to form a residents' council
- the right to interact with members of the community and to participate fully in the life of the community

Limitations on Residents' Rights

The admissions contract may not seek to limit rights afforded to residents by federal or state laws. If you have questions or concerns about residents' rights, please consult the resources listed at the end of this pamphlet.

Violations of Residents' Rights

Nursing home residents' rights are sometimes violated in connection with transfers and discharges. Complaints about inadequate medical care, food quality, neglect and abuse also arise. To address violations, the resident may either file a grievance or request a fair hearing.

Grievance Procedure

Residents may make complaints orally or in writing to facility administrators who must then act to resolve the problem. If an administrator is unable to resolve the complaint within

three business days, he or she must respond in writing to the complaining party. If the resident is not satisfied with this response, the resident may submit an oral or written complaint to the community or state ombudsman.

Should the ombudsman be unsuccessful in resolving the complaint, an impartial referee may be mutually agreed upon to convene a hearing on the issue. This hearing is to be held at the nursing home. A written decision must be rendered within 72 hours of the hearing and must include any recommendations for corrective action. A resident also has the option of bringing a private cause of action in court and requesting an administrative hearing.

The Fair Hearing

A nursing home resident or a resident's representative may request an administrative hearing through the Georgia Department of Human Resources, Office of Legal Services. The hearing must be held within 45 calendar days following the department's receipt of the hearing request. Notice will be sent to the administrator and to the complainant with the date, the time and the location of the hearing. No transfer shall take place until all appeal rights are exhausted, unless there is an emergency situation. The decision of the administrative law judge will state whether a violation of rights occurred, and, if so, what action should be taken. The decision must also include information about the right to appeal.

State Resources

To assist you with any questions or concerns you may have regarding nursing home residency, please contact the resources listed below for assistance and information.

Georgia Long-Term Care Ombudsman Program
1-888-454-5826

Georgia Senior Legal Hotline
404-657-9915 or 1-888-257-9519

Division of Aging Services
2 Peachtree St. NW, Suite 9385
Atlanta, GA 30303-3142
404-657-5258

Elder Rights Advocacy
404-657-5319

Office of Regulatory Services
(to file a complaint)
Long-Term Care Section
2 Peachtree St. NW, 31st Floor
Atlanta, GA 30303-3142
404-657-5850 or 1-888-454-5826

Local Resources

To find out more about your local Long-Term Care Ombudsman Program, contact the Georgia Long-Term Care Ombudsman Program, the Legal Services Developer or your local Georgia Legal Services Program. You may receive additional assistance, including information about Medicaid eligibility, by contacting your local Department of Family and Children Services office.

This pamphlet was prepared by the Elder Law Committee of the Young Lawyers Division of the State Bar of Georgia as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise on any specific legal problem. If you have specific questions regarding any matter contained in this pamphlet, you are encouraged to consult an attorney.



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