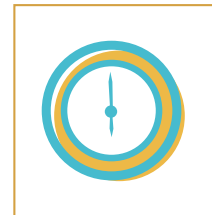
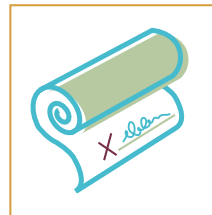
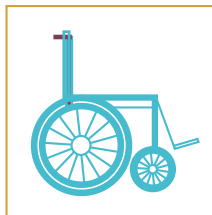


20^{Common} Nursing Home Problems — and How to Resolve Them



National Senior Citizens Law Center

With Support from The Commonwealth Fund

Eric Carlson, Esq.

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**National Senior Citizens Law Center
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**by Eric M. Carlson, Esq.
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Introduction

The average consumer knows much more about cars (or apartments, or cell phones) than she knows about nursing homes. What if, for example, an apartment tenant is told by her landlord that she has to move out within 48 hours, because she is too “difficult”? The tenant likely will object, and the law will be on her side in most cases, assuming that the rent has been paid.

As is explained in the discussion of Problem #19, being “difficult” never is enough to justify eviction from a nursing home, and evictions from nursing homes generally require 30-day advance notice. These eviction rules are set by the federal Nursing Home Reform Law, and they apply across the country.

Unfortunately, however, if a nursing home resident is told by the nursing home that she must leave within 48 hours on account of being “difficult,” the resident may panic and move out. Because she is unfamiliar with the relevant law, she is inclined to automatically believe everything told to her by the nursing home.

Too frequently, nursing homes follow standard operating procedures that violate the Nursing Home Reform Law and are harmful to residents. This guide discusses some of the most common practices, which are actually illegal, and explains strategies that residents and family members can use to avoid or reverse these illegal procedures. The goal is for each resident to receive the best care possible in full accordance with the law.

The Nursing Home Reform Law, referred to above, applies to every nursing home that is certified to accept payment from the Medicare or Medicaid programs (or both), even if the resident involved is not eligible for

either program and as a result is paying privately. Because Medicare and Medicaid are important sources of payment, over 95 percent of nursing homes are governed by the Reform Law.

The cornerstone of the Reform Law is the requirement that each nursing home provide the care that a resident needs to reach his or her highest practicable level of functioning. (See Section 483.25 of Title 42 of the Code of Federal Regulations) Some residents are capable of gaining strength and function; other residents are capable of maintaining their current condition. Still other residents at most may be able to moderate their level of decline. In all of these situations, the nursing home must provide all necessary care.

In implementing this guide’s strategies, a resident or resident’s family member at times may benefit from the assistance of an attorney or other advocate. One good source of assistance is the long-term care ombudsman program. Each state has an ombudsman program that provides advocacy for nursing home residents free of charge. Contact information for a particular state’s ombudsman program can be found at the website of the National Long Term Care Ombudsman Resource Center at www.ltcombudsman.org.

Each state maintains an inspection agency (often part of the state’s Health Department) that is responsible for monitoring nursing homes’ compliance with the Reform Law, certifying nursing homes for participation in Medicare and Medicaid, and issuing state licenses. Each of these agencies

Note: Copies of the relevant federal regulations are provided on NSCLC’s website, at www.nsclc.org/20common.html.

will investigate in response to a consumer complaint, and can issue warnings or impose penalties to force a nursing home to fix a particular violation. Contact information for these agencies can be found at the “Where Can I Go for Help?” page of the National Citizens’ Coalition for Nursing Home Reform website, at www.nursinghomeaction.org/static_pages/help.cfm.

Additional information about nursing homes is available in *The Baby Boomer’s Guide to Nursing Home Care*, a book co-written by Eric Carlson (author of this guide) and Katharine Hsiao. Both Mr. Carlson and Ms.

Hsiao are attorneys at the National Senior Citizens Law Center. The *Baby Boomer’s Guide to Nursing Home Care* will be published in Spring 2006.

The National Citizens’ Coalition for Nursing Home Reform (www.nccnhr.org) likewise has many helpful publications for nursing home residents and their families. The federal government maintains a Nursing Home Compare website (www.medicare.gov/NHCompare/home.asp) that provides extensive information on individual nursing homes.

Important Note

This guide is not a substitute for the independent judgment and skills of an attorney or other professional. If you require legal or other expert advice, please consult a competent professional in your geographic area.