

## **Consumer Legal Guide**



# Consumer's Quick Guide to Problems with Nursing Home Contracts and Problems with Nursing Home Stays



**ILLINOIS STATE**  

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**BAR ASSOCIATION**

**ASK A LAWYER**

## **The Problem Faced by Many Seniors and Their Personal Representatives**

In determining what rights seniors have in Illinois, one must consult both the federal Nursing Home Reform Act and the Illinois Nursing Home Care Act.

The federal law applies to every nursing home that is certified to accept payments from the Medicare and Medicaid programs. These laws apply even if the resident of such homes is not eligible for either program and is on private pay.

The legislative intent behind the federal law is to maintain the ideal that each resident's care must be provided so that all residents reach his or her highest practical level of functioning.

With regards to the Illinois Nursing Home Care Act, one can consult with the state's ombudsperson program about resident's rights and responsibilities. Furthermore, each state has an inspection agency that is responsible for monitoring nursing home compliance with both the federal and state laws.

### **Nursing Home Contract Issues**

1. When you came from the hospital, were you on admitted status for three consecutive midnights, or were you on observation status?
2. Did the hospital disclose to you what your status was?
3. Did you receive a discharge plan upon leaving the hospital?
4. How did you get to the nursing home?
5. Did you come from a hospital stay?

6. Did the nursing home welcome you, or was there an issue regarding private pay versus Medicaid?
7. Were you forced to arbitrate personal injury disputes rather than bringing them before a jury?
8. Were you forced by contract to expend all of your resources at the nursing home? Were you denied a chance for planning with your assets as is permitted under Medicare, Medicaid, and Social Security laws?
9. Were you forced to waive any right to challenge or litigate injuries arising from the conduct of the nursing home?
10. Were you not told that representations made in the nursing home application were incorporated by reference into the nursing home contract before a lawyer has a chance to review the contract?
11. Is a nursing home contract required?
12. Who should sign the nursing home contract?
13. What provisions should the contract contain?
14. What provisions should be eliminated from the contract?
15. Does the contract contain a waiver of liability to the disadvantage of the senior?
16. Does the contract contain a mandatory arbitration clause?
17. Must you sign a nursing home contract before your attorney gets a chance to review it?

18. Did the nursing home disclose to you that only certain beds are certified for Medicaid or Medicare?
19. If you are being evicted, what were the grounds or complaint against you for being evicted? Was it behavior, was it the level of care you needed, etc.?

### **Nursing Home Stay Problems**

1. Not being given the chance to have the nursing home contract reviewed by your lawyer prior to signing.
2. Not being made aware that your nursing home stay is not being covered by Medicare due to the fact that your stay in the hospital preceding your rehabilitation in the nursing home was on observation status.
3. Being sent from the nursing home to the hospital, and upon being discharged from the hospital, not being readmitted to the nursing home and not being able to appeal the discharge because the discharge action is withdrawn by the nursing home.
4. Did the nursing home tell you that you were leaving because you were not improving? You don't have to improve to continue to receive Medicare or Medicaid, you just need to require a certain level of skilled care.
5. Are you in a nursing home that can handle an adequate level of care? Are you considering an independent living facility or assisted living facility?

6. Does your nursing home have enough skill to handle a feeding tube?
7. Did the nursing home describe to you that your room may have a monitoring device that's requested by the neighbor you're sharing a room with?

### **Attorneys Can:**

1. Review the nursing home **application** before you sign it.
2. Review the nursing home **contract** before you sign it.
3. Revise your Powers of Attorney so that they contain all the powers you need while in a nursing home.
4. Inventory your assets properly so that a measurement can be made about what you can afford and what your access to government benefits is for your nursing home stay.
5. Revise your estate planning documents now that you're in a nursing home.
6. Draft a blueprint laying out your options for Medicaid and VA benefits eligibility.
7. Create a strategy to protect your assets to the extent possible when being forced to spend down to become Medicaid eligible.
8. Prepare the Medicaid application to increase your chances of eligibility.
9. Represent you in communications with Medicaid audit personnel.

10. Appeal any decisions that are unfavorable.

### **ISBA Elder Law Section Council Mission**

- to inform and advise the members of the bar whose practice involves representing older persons in such areas as estate planning, public benefits, nursing home residents' rights, elder abuse, age discrimination, real estate's issues, senior housing, and guardianship;
- to review and make recommendations regarding proposed legislation that may affect older persons;
- to promote the legal rights of older persons to enjoy their communities, families, and lives to the fullest extent possible, and to inform older persons of these rights;
- to provide a forum for the exchange of views and information in furtherance of these goals

### **ISBA**

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**IllinoisLawyerFinder.com** is the Illinois State Bar Association's statewide lawyer directory on the Web. Search for lawyers by practice area, name, county or town.

Find a lawyer near you 24/7 on the Web at **IllinoisLawyerFinder.com** or call us from around the state at **217-525-5297** or **800-922-8757** Monday through Friday from 9:00 a.m. to 4:00 p.m.



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**This pamphlet is prepared and published by the Illinois State Bar Association as a public service.**

Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **[www.IllinoisLawyerFinder.com](http://www.IllinoisLawyerFinder.com)**

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**[www.ISBAlawyers.com](http://www.ISBAlawyers.com)**

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