Legal Rights of Nursing Home Residents

State Bar of Georgia

Consumer Pamphlet Series
Introduction

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 and what you need to know while staying in a nursing home. The last page of this pamphlet lists agencies to contact for assistance.

Some Terms You Should Know

Legal guardian:

A competent person has the right to make decisions and control his or her own life. Georgia law considers a person to be competent unless a judge has found him or her to be incompetent and has appointed a legal guardian for that person. The legal guardian then has the right and obligation to make decisions for that person in accordance with the guardianship order.

Long-term care ombudsmen:

The long-term care ombudsman is an advocate for nursing home residents and helps protect residents’ rights. An ombudsman investigates and works to resolve problems or complaints affecting residents. Complaints to an ombudsman may be made anonymously by anyone aware of a concern. Ombudsmen do not charge for their services, and they keep matters confidential.

The ombudsman can, with the resident’s permission, investigate and try to resolve the concern. However, the ombudsman does not regulate the facility.

Methods of payment:

The three common methods of payment for nursing home care are private pay, Medicare and Medicaid. The costs of the nursing home for a private pay resident are paid with his or her own resources, family resources or private insurance.

Medicare (a government insurance program) pays for certain kinds of care (called “skilled care”) for a short period of time. Medicaid is a government insurance program for individuals with limited income, which will pay for nursing home care for financially eligible residents. Many individuals who enter a nursing home as a private pay resident use up their resources and become eligible for Medicaid. Not all nursing homes accept Medicaid, but most do.
Power of Attorney:

This document grants certain specified powers from the principal (the person granting the power of attorney) to an agent. A Durable Power of Attorney for Health Care delegates power to an agent to make specified health care decisions on behalf of the principal when the principal is not able to either make or communicate such decisions.

A Financial Power of Attorney delegates power to an agent to make specified financial decisions for the principal. However, with a financial power of attorney, the agent may have authority to act even when the principal is also able to act depending on the provisions of the power of attorney. A power of attorney may delegate powers only for a specified period of time, for example, when the principal is having surgery and recovering, or when the principal is out of the country. Such a power of attorney, triggered by some event or occurrence, is known as a springing power of attorney. None of these powers of attorney is the same as guardianship.

The principal creating the power of attorney decides the scope and duration of any agent’s powers to act. Unlike the power of attorney, a judge of Probate Court determines the scope and duration of guardianship. If you have questions or concerns about guardianship and/or powers of attorney, you may wish to seek legal advice.

Nursing Home Admissions Agreement

A nursing home admission often follows a sudden and debilitating illness. You may be in despair of your loved one’s worsening medical condition and may be desperate to locate an available placement. Failure to adequately review admissions contracts, ignoring the contents altogether or contractually agreeing to illegal terms often results.

It is extremely important that you read and understand the admission agreement before you sign it. You have the right to take the agreement home with you to review. You may wish to have an attorney look at it before you sign it. You have the right to ask the nursing home to make changes to the agreement before you sign it, but the nursing home does not have to agree to the changes. Make sure that all of the terms of the agreement are included before you sign it. Be sure to get a copy of the agreement after everyone has signed it.

Some nursing home admissions contracts contain provisions that are not allowed by law. This means that the nursing home cannot legally enforce those provisions against you. Some examples of the illegal provisions are discussed below. If you have questions or problems, you may contact one of the resources listed on the last page of this pamphlet.

Law Governing the Admissions Contract

A facility participating in Medicaid or Medicare is governed by federal and state laws. If a facility does not participate in Medicaid or Medicare, only state law applies. You should find out if the facility you are considering participates in Medicare or Medicaid.

Duration of Stay Agreements

Nursing homes in Georgia are not prohibited from giving preference to an applicant who is able to pay privately over an applicant who is Medicaid eligible. However, federal law prohibits nursing homes from:

- requiring at admission that the resident waive his or her rights to Medicare or Medicaid;
- requiring oral or written promises that residents are not eligible for Medicaid or Medicare or that they will not apply for those benefits; and
- requiring a resident to pay the nursing home from private funds for a given period of time before applying for Medicaid.

It is not true that once Medicare benefits are exhausted, the resident must leave the nursing home. Federal law protects residents from discrimination based on method of payment. Nursing homes must inform each resident who is entitled to Medicaid benefits what services are paid for by Medicaid and how a resident can apply for Medicaid. Such information must be provided to the resident in writing at the time of admission or at the time a resident becomes eligible for Medicaid.

Responsible Party and Guarantees of Payment

Nursing homes are also barred by federal law from requiring a guarantee of payment from a third party (that is anyone other than the resident) as a condition of admission, expedited admission or continued stay. A facility is permitted to require a third-party guarantee of payment for non-covered services (services not covered by Medicaid).

A facility may require an individual who has legal access to the resident’s income or resources to pay for nursing home care and treatment from the resident’s
income and to sign an admissions contract, without incurring personal financial liability. Such individuals may include agents under financial powers of attorney, Social Security representative payees or guardians of property. All residents must pay for personal items, including hair styling and tobacco products.

Resident’s 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 $30 of their monthly income for clothing, toiletries, haircuts, personal phone calls and other personal needs ($60.00 per month for a married couple). EXAMPLE: A resident has a monthly income of $400.00 from Social Security. Each month the resident may keep $30.00 for personal needs and must pay the remaining $370.00 to the nursing home. Medicaid pays the balance of the nursing home cost.

Transfer and Discharge

A nursing home may transfer or discharge a resident against his or her wishes only if: (1) the transfer or discharge is necessary for the resident’s welfare and the failure to do so will result in injury or illness to the resident or others; (2) there has been non-payment of allowable charges; (3) the resident no longer requires the level of care currently being provided; and (4) the resident’s needs cannot be met in the facility.

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

So long as the discharge is not an emergency, a nursing home must provide a written notice to the resident, the resident’s representative and the resident’s physician 30 days prior to any proposed transfer or discharge regardless of the admission contract terms.

The notice must include: (1) the reason for transfer or discharge; (2) the effective date of transfer or discharge; (3) the location to which the resident is being transferred or discharged; (4) a statement that the resident has the right to appeal the proposed action to the state; (5) the name, address and telephone number of the state long-term care ombudsman; and (6) 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 you receive a notice of transfer or discharge and you disagree, you should immediately consult with one of the resources listed at the end of this pamphlet. If you disagree with the transfer or discharge, it is important that you request a hearing immediately. This will protect your right to continue to receive services while the appeal is pending.

State regulations require that, unless an emergency situation exists, all nursing homes must pursue all reasonable alternatives prior to initiating transfer or discharge of a resident.

Bed Hold Policies

Nursing facilities that participate in the Medicaid program must provide written notice of the state bed hold policy to the resident and family member prior to a hospital transfer or therapeutic leave. In Georgia, Medicaid will pay for a “hold” on the resident’s bed during his or her absence for up to seven days. Family members or others may arrange for the facility to hold the bed for a longer period of time. The facility may charge a mutually agreeable rate not to exceed the total allowable per diem billing rate that the facility would have been paid had the resident been in the facility.

Requiring Payment for Services Included in Medicaid or Medicare Programs

For residents who are covered by Medicare or Medicaid, these programs cover the expenses included in the approved reimbursement rate for that facility. These covered goods and services must be provided to the resident at no additional charge. These services include, but are not limited to: nursing services; dietary services; activities programs; room/bed maintenance services; routine personal hygiene items and services; and medically related social services.

If the admission agreement requires payment for the services mentioned above, it is unenforceable. Any list of covered services in the admissions contract should be carefully reviewed. Nursing homes may offer additional
services not included in the Medicaid or Medicare reimbursement rate provided that the facility gives the resident proper notice of the availability and cost. The facility is not permitted to require payment for additional services as a condition to admission or continued stay in the facility.

Contributions to the Facility

State law and regulations prohibit facilities from requiring contributions from any resident.

Residents’ Rights

Georgia law provides for the rights of residents concerning admission, transfer, discharge and care in the facility, and provides remedies for residents 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 his/her rights 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 (for example, 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 to be free from 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/dental treatment;
- the right to participate in one’s care plan;
- the right to access one’s records;
- the right to voluntarily transfer or discharge oneself;
- the right to access an ombudsman;
- the right to form a resident council; and
- the right to interact with members of the community and to participate fully in the life of the community.

Limitations on Residents’ Rights

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

Violations of Residents’ Rights

Nursing home residents’ rights are sometimes violated in connection with transfer and discharge. Complaints about inadequate medical care, food quality, neglect and abuse also arise. The following procedures may be used to address violations.

Grievance Procedure

Residents may complain either orally or in writing to the nursing facility administrator who must act to resolve the complaint. If the 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.

If the ombudsman is unable to resolve the complaint, an impartial referee may be mutually agreed upon to convene a hearing on the issue held at the nursing home. A written decision must be rendered within 72 hours of the hearing, including any recommendations for corrective action. A resident may also bring a private cause of action in court or request an administrative hearing.

Fair Hearing

A resident or 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 complainant with the date, time and 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 include whether a violation of rights occurred, and if so, what action should be taken. It must also include information about the right to appeal.
If you have questions or concerns about residents’ rights, please consult the resources listed below for assistance.

**State Resources**

**Office of the State Long-Term Care Ombudsman**
2 Peachtree Street NW, 9th Floor
Atlanta, GA 30303-3167
(888) 454-5826

**Legal Services Developer**
Division of Aging Services
2 Peachtree Street NW, 9th Floor
Atlanta, GA 30303-3167
(404) 657-5319

**Georgia Senior Legal Hotline**
(404) 257-9519
(888) 257-9519

**Office of Regulatory Services**
Long-Term Care Section
(to file a complaint)
2 Peachtree Street NW, 31st Floor
Atlanta, GA 30303-3167
(404) 657-5726

**Department of Human Resources**
Office of Legal Services
(to request a hearing on a complaint)
2 Peachtree Street NE, 29th Floor
Atlanta, GA 30303-3167
(404) 656-4421

**Local Resources**

You may contact the local Long-Term Care Ombudsman Program by calling the office of the State Long-Term Care Ombudsman, or contact the Elderly Legal Assistance Program (for people over 60) through the Legal Services Developer or the local Georgia Legal Services Program. You may receive other assistance (including information about Medicaid eligibility) by contacting your county Department of Family and Children Services office.

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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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