

Evictions from Nursing Homes

There are only six legal reasons why a nursing home can force a resident to leave. Outside of these reasons, evictions are not allowed. Unfortunately, many residents and their families don't know their rights. Learning about these rights can help prevent illegal discharges.

How Medicare & Medicaid Cover Nursing Home Care

Understanding how Medicare and Medicaid pay for nursing home care can help explain why some residents face wrongful evictions.

Medicare

Medicare is federal health insurance for people 65 and older. It covers short-term stays in a nursing home after a hospital visit. In 2024, coverage works like this:

- Days 1-20: Medicare pays 100% of costs.
- Days 21-100: Medicare pays part of the cost, but the resident must pay \$204 per day (unless they have Medicare Supplemental Insurance, which usually covers that cost).

Note: Medicare Advantage plans provide similar coverage but there can be different cost structures.

If a resident still needs nursing home care after 100 days, they must pay out of pocket or apply for Medicaid.

Important: As long as a resident has a pending application for Medicaid, the nursing home cannot evict the resident, unless the home does not accept Medicaid as a payment.

Medicaid

Medicaid is a government program for both low-income people and people with high medical costs. Unlike Medicare, Medicaid covers long-term nursing home care as long as the person qualifies. However, Medicaid pays nursing homes less money than Medicare, which is why some facilities try to evict Medicaid patients.

Legal Reasons for Nursing Home Evictions

The Nursing Home Reform Act (NHRA) of 1987 protects residents from unfair evictions. For nursing homes to receive payment from Medicare and/or Medicaid, they must follow the NHRA. Under the NHRA, a nursing home can only evict a resident for these six reasons:

- The resident needs more care than the nursing home can provide.

Note: Nursing homes must try to adjust staffing and care before deciding they can't meet a resident's needs.

- The resident has not paid for care or applied for Medicare or Medicaid after receiving "reasonable" notice to pay.
 - Under Wisconsin law, a resident cannot be evicted for nonpayment from a nursing home if:
 - They need ongoing care and treatment but have not been accepted by another facility or community support services to keep getting the

care they need.

AND

- The funding of their care in the nursing home by Medicaid has been reduced or stopped because:
 - They require a level or type of care which is not provided by the nursing home

OR

- The nursing home is primarily providing care and treatment of people with mental diseases.
- The resident has recovered to the point where they no longer need nursing home care.
- The resident's presence is a health risk to others.
- The resident's presence is a safety risk to others.
- The nursing home is closing.

If a nursing home decides to evict a resident, it must follow certain rules:

- Give a written eviction notice. The notice must be received a minimum of 30 days (but may be up to 60 days) before the eviction date. The only exception is for an emergency. The written notice must include the following information or it is not valid:
 - The reason for the eviction and what has been done to try to solve the issue.
 - The location to which the resident will be discharged
 - Information on how to appeal the decision and contact information of the area Long-Term Care Ombudsman.

Definition: Ombudsman (om-budz-man) means “helper” or “advocate.” A long-term care ombudsman is a person who has authority to advocate on behalf of persons age 60 and older who receive their long term care services as residents or tenants of a licensed or certified long term care setting such as a nursing home.

- The nursing home must provide a discharge plan, including:

- The nursing home must make certain the nursing home resident has a place in which to move (near family and loved ones, if possible)
- A summarization of the nursing home resident's physical and mental status must be prepared.

Common Illegal Reasons for Evictions

Medicare Coverage is Ending or Private Funds are Running Out

If a resident can no longer afford to pay, the nursing home must give them reasonable time to find another way to pay (likely Medicaid). If a Medicaid application or appeal is pending, the resident cannot be evicted for non-payment.

Note: An exception exists if the nursing home does not accept Medicaid as a form of payment. Approximately ten percent of nursing homes do not accept Medicaid as a form of payment.

The Nursing Home Stops Accepting Medicaid

A nursing home cannot evict current residents on Medicaid simply because it has decided to stop accepting any Medicaid-funded patients going forward.

The Nursing Home Claims It "Cannot Meet the Resident's Needs"

Sometimes, a nursing home wrongly claims it cannot care for a resident. This is sometimes used as an excuse to remove residents with "difficult" behaviors, like those with Alzheimer's disease. If the nursing home is truly unable to provide care, it must explain exactly what needs it cannot meet, how it tried to meet them, and how the next facility will meet them.

The Resident Goes to the Hospital, and the Nursing Home Won't Let Them Return

Some nursing homes refuse to let residents return after a hospital stay by claiming the bed is no longer available. This is called "hospital dumping." Under Wisconsin regulations, a nursing home must hold a resident's bed for 15 days if they leave temporarily for hospital surgery or treatment. Medicaid residents must be readmitted as soon as a Medicaid-certified bed is available, no matter the length of the hospital stay.

If a Nursing Home Tries to Evict a Resident and You Think It's Unlawful

You do **NOT** have to move right away

Remember: A written notice must be given at least 30 days before the eviction date.

File an Appeal

Contact the Wisconsin Long-Term Care Ombudsman and file an appeal as soon as possible after getting the eviction notice. An appeal can be filed by the resident, their family, or their representative.

Note: The resident cannot be evicted while an appeal is in progress.

You can contact the Wisconsin Long Term Care Ombudsman through the [Wisconsin Board on Aging and Long Term Care](#).

Board on Aging & Long Term Care
1402 Pankrutz St., Suite 111
Madison, WI 53704-4001

800-815-0015 (toll-free) or 920-232-5826

Ombudsmen serve statewide, are assigned by regions, and in Milwaukee County by zip code. When requesting ombudsman services please provide the county and/or name of the nursing home where the individual resides, the zip code if the individual lives in Milwaukee County, an email address or phone number for a return call, and a brief description of the concern.

Check if Resident Qualifies for Medicaid (If Needed)

If a resident cannot afford care, check if the resident qualifies for Medicaid.

- If they do, apply immediately.
- If they do not, consult a Medicaid Planner to help the resident meet Medicaid's qualifications.

Remember: If a Medicaid application or appeal is pending, the resident cannot be evicted for non-payment (unless the nursing home does not take Medicaid as a form of payment)

Talk to an Elder Law Attorney

If the nursing home is breaking the law, a lawyer may be able to help.

Final Thoughts

No one should be forced out of a nursing home unfairly. If a resident or their family is being pressured to leave, they have rights and can fight back. Understanding Medicare, Medicaid, and legal protections can help prevent wrongful nursing home evictions.

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