

Using New Toolkit to Fight Nursing Facility Evictions

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

- Residents and their families should not panic over eviction threats, but should instead request appeals.
- Under federal law, facilities can only evict residents for six reasons, but facilities often attempt evictions for impermissible reasons.
- Justice in Aging toolkit helps residents and families fight evictions. Documents include
 - Fact sheets on improper reasons for eviction
 - Sample administrative hearing briefs
 - Sample court filings to prevent hospital dumping

Nursing Facility Toolkit



Improving Care & Protecting Resident's Rights

Nursing facility residents deserve the best of care, but for far too long they have been neglected by both facilities and government inspection agencies. Justice in Aging works at multiple levels to improve the lives of facility residents. At the federal level, Justice in Aging advocates in Congress for improvements to federal law, while also pushing the Centers for Medicare and Medicaid Services (CMS) to improve regulatory standards and inspection procedures. Also, through written guides, public presentations, and webinars, Justice in Aging educates both professionals and consumers on how to advocate for both individual facility residents and broader systemic improvements. In all these ways, Justice in Aging serves as an important national voice for older Americans living in nursing facilities.

[Go to the Nursing Facility Toolkit](#)

25 Common Nursing Home Problems— and How to Resolve Them



- Step-by-step advocacy guide
- [Get the Guide](#)

Basics of Nursing Facility Evictions

Toolkit for Fighting Nursing Home Evictions

Improper evictions are a long-standing problem in nursing facilities across the country. Federal law allows eviction only for six narrow reasons, but facilities often evict residents for various invalid reasons, including being "difficult," needing one-on-one attention, switching from Medicare to Medicaid payment, and not complying with treatment plans. Advocates and consumers can use the materials in the toolkit below to fight back.

The Basics of Nursing Facility Evictions

Recognizing Improper Evictions

Administrative Hearing Briefs

Seeking Court Order to Stop Hospital Dumping

Learn about the six valid reasons for evictions and get a basic introduction to fighting illegal evictions in this short fact sheet, [The Basics of Nursing Home Evictions](#).

Two biggest takeaways:
1) Don't Move Out!
2) Appeal

[Basics of Nursing Facility Evictions Fact Sheet](#)

Recognizing Improper Evictions

- Summaries of seven common types of evictions, ways to recognize and fight them
- Distribute them to the aging network and the public!
- Add your logos and contact info (while recognizing Justice in Aging as author)

Toolkit for Fighting Nursing Home Evictions

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Below are summaries of seven common types of evictions, ways to recognize them, and tips for fighting them. Suitable for use by legal services offices and ombudsman programs.

Challenging a Nursing Home Eviction: Facility Claims that It Cannot Meet Resident's Needs, Arguing that Resident and/or Family Members Have Complained About Quality of Care

Challenging a Nursing Home Eviction: Facility Claims That Residents Must Leave When Their Medicare Ends

Challenging a Nursing Home Eviction: Facility Claims That the Resident Has Refused Health Care

Challenging a Nursing Home Eviction: Facility Tries to Evict Because Medicaid Has Claimed Resident Is No Longer Eligible

Challenging a Nursing Home Eviction: Nursing Home Claims That Resident Has Broken Facility Rules

Challenging a Nursing Home Eviction: Facility Claims Non-Payment While Medicaid Application Is Pending

Challenging a Nursing Home Eviction: Facility Claims That Resident Is Endangering Others

E.G., Eviction Based on Non-Payment While Medicaid Pending

- Facility trying to evict resident because of non-payment while Medicaid is processing application.
 - Non-payment does not apply if resident has submitted documents for Medicaid's decision.
 - Resident should pay good-faith estimate of patient pay amount.
 - Medicaid provides up to three months of coverage prior to application month, if resident eligible during those months.
 - [Read the full Practice Tip](#)

Eviction Based on Resident Supposedly Endangering Others

- 86 year-old resident with advanced Alzheimer's pushed nurse aide; facility tries to evict for "endangering" staff.
 - Resident generally not presenting danger.
 - Residents often reacting due to the nature of dementia or other underlying disease.
 - Quality dementia care and training can reduce likelihood that resident will react physically.
 - First response should be to reassess care plan, rather than eviction.
 - [Read the full Practice Tip](#)

Administrative Hearing Briefs

Toolkit for Fighting Nursing Home Evictions

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The Basics of Nursing Facility Evictions	
Recognizing Improper Evictions	
Administrative Hearing Briefs	<p>Below advocates can access, download, and adapt five sample briefs developed by Justice in Aging for defending residents at eviction hearings.</p> <ul style="list-style-type: none">Facility Alleges Nonpayment for Charges Incurred Prior to Resident's Medicaid CoverageFacility Bases Transfer/Discharge on Supposedly Endangering Safety of OthersFacility Bases Transfer/Discharge on Supposed Need for Higher Level of CareFacility Alleges Nonpayment While Resident's Medicaid Application is PendingFacility Bases Transfer/Discharge on Resident's Refusal of Treatment
Seeking Court Order to Stop Hospital Dumping	

- Advocates can access, download, and adapt five sample briefs developed by Justice in Aging for defending residents at eviction hearings.
- Advocates fill in the facts and add relevant state- or resident-specific details.

Template Brief When Facility Claims Resident Needs Higher Level of Care

- Facility claims it cannot meet resident's needs because resident needs a higher level of care than facility can provide.
 - Facility has obligation to provide care to allow resident to attain or maintain highest practicable level of functioning.
 - Facility must state exactly which specific needs allegedly cannot be met.
- Section 1 – Statement of facts
- Section 2 – Review/edit legal authority with discussion about resident's specific care needs
- Section 3 – Conclusion
- [Template can be found here](#)

Template Brief When Facility Claims Resident Endangers Others

- Facility claims resident is danger to others after resident pushes nurse aide trying to help with meals.
 - Altercations often result of underlying illness like dementia, and not dangerous.
 - Training and updating care plans prevents altercations.
- Section 1 – Statement of facts
- Section 2 – Review/edit legal authority with discussion about Resident's unaddressed needs and how altercations are due to unmet needs
- Section 3 – Conclusion
- [Template can be found here](#)

Seeking Court Order to Stop Hospital Dumping

- One common way that nursing facilities evict residents is by refusing to allow them to return after hospitalization.
- Toolkit has sample complaint, plus two sample requests for injunctive relief.

The Basics of Nursing Facility Evictions

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One common way that nursing facilities evict residents is by refusing to allow them to return after hospitalization. Below are three sample complaints for seeking injunctive relief that advocates can download and adapt.

Kentucky Sample: **Complaint When Seeking Injunctive Relief to Allow Nursing Facility Resident to Return to Facility from Hospital** (Can be adapted for use in states other than Kentucky.)

New Mexico Sample: **Application for Immediate Injunctive Relief to Allow Nursing Facility Resident to Return to Facility from Hospital** (Can be adapted for use in any state that uses a four-part injunctive relief test similar to the test used in New Mexico.)

Kansas Sample: **Application for Immediate Injunctive Relief to Allow Nursing Facility Resident to Return to Facility from Hospital** (Can be adapted for use in any state that uses a five-part injunctive relief test similar to the test used in Kansas.)

Sample Complaint to Allow Resident to Return to Facility

- Applies when facility refuses to allow resident to return from hospital
- State-court causes of action, using federal law to set standard of care
- Provides underlying complaint for application for injunctive relief
- [Kentucky Sample](#)
- [New Mexico Sample](#)
- [Kansas Sample](#)

Cause of Action for Violation of State Consumer Protection Law

- State the parties, introduction, background on state and federal nursing facility law, and statement of facts.
- First Cause of Action: Unfair Trade Practices in violation of Kentucky Consumer Protection Act.
 - States have variations of the Unfair and Deceptive Acts and Practices (UDAP) laws prohibiting unfair or deceptive practices in trade or commerce.
 - Federal nursing facility law provides legal standard for nursing facility practices—by violating federal law, facility is violating state Consumer Protection Act.

Causes of Action for Breach of Contract, Plus Tort Claims

- Second Cause of Action: Resident is third-party beneficiary to provider contract between state Medicaid agency and facility. Contract requires facility to comply with federal law.
- Third Cause of Action: Intentional Infliction of Emotional Distress
- Fourth Cause of Action: Negligent Infliction of Emotional Distress
- And Prayers for Relief

Sample Application for Immediate Injunctive Relief to Return to Facility – New Mexico

- Four part test for injunctive relief:
 1. Plaintiff will suffer irreparable injury without relief.
 - Plaintiff's injury cannot be remedied monetarily—risks physical injury from not receiving necessary services.
 2. Injury to Plaintiff outweighs potential damage to Defendant.
 - Defendant's only potential injury is monetary or logistical; Plaintiff's health and safety clearly outweighs.
 3. Injunction is not adverse to public interest
 - It is in public interest to protect aging and disabled individuals like Plaintiff
 4. Plaintiff has a substantial likelihood to win on merits
 - Plaintiff likely to win on merits because federal nursing facility law prohibits this exact practice.

Additional Resources: COVID-19, Disaster Planning, & Fighting Rollback of Nursing Facility Regulations

Additional Resources

COVID-19 Resources

Disaster Planning

Fighting the Rollback of Nursing Home Regulations

With nearly half of all COVID-19 deaths tied to nursing facilities, Justice in Aging has engaged in aggressive advocacy aimed at keeping residents safe by pushing policymakers to institute and enforce strong consumer protections.

[Imbalanced Commission Report Does Not Do Enough to Make Nursing Homes Responsible for Resident Safety and Quality of Life, September, 2020](#)

[Statement to the House Select Subcommittee on the Coronavirus Crisis in Nursing Facilities, June, 2020](#)

[Letter to CMS re Ongoing Problems in Response to COVID-19 Emergency in Nursing Facilities, June, 2020](#)

[Letter to Senate Leadership Opposing Immunity for Nursing Homes During COVID-19, May, 2020](#)

[Letter to Centers for Medicare and Medicaid Services Outlining Nursing Facility Recommendations for COVID-19, May, 2020](#)

[Statement Calling on CMS to Publish Guidance on Transparency for Nursing Facilities, April, 2020](#)

Additional Resources

- Justice in Aging: [Defending Against “Bad Behavior” Evictions in Nursing Facilities Webinar](#)

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.