

JUSTICE IN AGING

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TOOLKIT

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

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THE PROBLEM

You live in a nursing home. Your Medicare coverage is ending, and you plan to transition to Medicaid coverage. But the administrator tells you that you must move out immediately: according to him, your bed in the nursing home is Medicare-certified and reserved for short stay or transitional care residents.

THE LAW

Federal nursing home law allows eviction for non-payment but not for a change in the type of payment. A facility cannot evict a resident just because Medicare coverage is ending—a resident can switch to private payment, Medicaid coverage, or some other payment type. Also, the resident has a right to appeal an eviction. See sections 483.10(a)(2) (no payment-source discrimination) and 483.15(c) (eviction protections) of Title 42 of the Code of Federal Regulations.

THREE IMPORTANT THINGS TO KEEP IN MIND

- 1. A resident can use private payment or (generally) Medicaid to pay for care in a Medicare-certified bed.**

Medicare certification means that a particular bed can be used for Medicare payment, as long as the resident's care needs meet Medicare coverage requirements. Medicare certification, however, does not prevent other types of payment from being used. Private payment always is an option for residents with enough money while the availability of Medicaid coverage depends on the resident being eligible for Medicaid and the bed being Medicaid-certified. The resident should confirm that the facility accepts Medicaid.

- 2. In a few states, a Medicaid-certified nursing home has the option of certifying all or just a portion of its beds for Medicaid.**

Such partial certification can complicate a resident's ability to use Medicaid coverage. You can see if all of a facility's beds are Medicaid certified by visiting the Care Compare Website at [medicare.gov/care-compare](https://www.medicare.gov/care-compare). If you are in a facility that is only partially certified for Medicaid and you expect to need Medicaid coverage, you should ask for a transfer to a Medicaid-certified bed.

3. A resident can appeal an improper Medicare decision.

Usually Medicare coverage ends because the nursing home (or, in some cases, a Medicare Advantage managed care plan) has decided that the resident's care needs no longer are high enough to meet Medicare standards. The resident can appeal such a Medicare decision. Also, note that a Medicare termination is not an eviction. A resident can appeal a Medicare termination and a nursing home eviction at the same time.

REQUEST AN APPEAL

A resident has a right to an eviction hearing with a state hearing officer. Don't hesitate to request an appeal. Some residents and family members initially think, "If they don't want me, I don't want to stay," but that attitude is counterproductive. When residents win their appeal hearing, the nursing home generally gives the resident more respect and provides better care. Also, appeals are free of charge, and residents have a right to seek assistance from an attorney, nursing home ombudsman, or other advocate.

Improper evictions are a longstanding problem in nursing facilities across the country. This information is part of a toolkit that offers resources for both consumers and professionals. [The full toolkit is available online here.](#)