

TOOLKIT

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

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THE PROBLEM

Your father is living in a nursing home. You helped him complete a Medicaid application and submitted the requested documentation, but the Medicaid agency is still processing the application. The nursing home's administrator calls you today, complaining that the nursing home bill has not been paid for two months, and informing you that an eviction notice is in the mail.

THE LAW

Federal nursing home law allows eviction for non-payment, but non-payment does not exist when a claim for payment is pending with Medicaid, Medicare, or other third-party payor. Also, a resident has a right to appeal an eviction. See section 483.15(c)(1)(i)(E) of Title 42 of the Code of Federal Regulations.

THREE IMPORTANT THINGS TO KEEP IN MIND

- 1. Non-payment does not include situations where the necessary paperwork for payment has been submitted but not yet acted upon.**

Applications for Medicaid, Medicare, or other sources of payment may take time to process. If the resident has submitted the necessary documents for payment, the facility cannot evict for non-payment while an application is pending.

- 2. While a Medicaid application is pending, the resident should pay a good-faith estimate of the Medicaid patient pay amount that may be assessed after approval.**

Payment gives the facility confidence that the resident will pay bills. Also, payment is helpful in keeping the resident's financial resources under the Medicaid limit.

3. Medicaid can provide coverage up to three months prior to the application month.

Even if a Medicaid application may take weeks or even months to process, a nursing home eventually can get coverage for services provided prior to the approval, or even prior to the application. Specifically, Medicaid can cover services up to three months prior to the application month for all months during which the resident met all eligibility requirements.

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.](#)