

## TOOLKIT

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

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## THE PROBLEM

You have lived in a nursing home for several years. You have been refusing Xanax because you don't like the way that it makes you feel, but the nursing home wants you to take the medication. The nursing home is now trying to evict you, arguing that they can't meet your needs.

## THE LAW

Under federal law, a nursing home resident has the right to make health care decisions, which includes the right to refuse services or treatment. Facilities must inform residents of their right to accept or refuse care. See sections 483.10(c)(6) (right to refuse treatment) 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 has the right to refuse care.

Like all other persons, nursing home residents are entitled to make their own health care decisions. Nursing homes must inform residents of their right to health care decision-making, including the right to accept or refuse treatment.

### 2. A resident's refusal can justify eviction only if the refusal endangers others' health.

Nursing homes are allowed to evict a resident if the resident's presence endangers other residents or staff. Even in these cases, however, a nursing home should not default to an eviction. Instead, the facility should work with the resident to establish a care plan that addresses difficulties that the resident may be facing.

### 3. Medications Should Not Be Given to Control or Sedate Residents.

Too often, nursing homes use antipsychotic medications to keep residents “manageable.” This is wrong—facilities should give residents adequate attention and assistance, rather than sedating them with medication. Remember point #1 above—a resident makes his or her own health care decisions. A resident (or resident’s representative) always has the right to refuse antipsychotic medication or other unwanted medication.

## 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.](#)