

TOOLKIT

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

JULY 2021

THE PROBLEM

Your mother has lived in a nursing home for several years. Medicaid has paid for the nursing home care, but a recently-received Medicaid termination notice claims that your mother no longer needs nursing home care. The nursing home now threatens to evict your mother, based on the assumption that Medicaid payment is ending.

THE LAW

Federal nursing home law allows eviction for non-payment only after non-payment has actually occurred and the facility has given the resident "reasonable and appropriate notice" of the amount owed. Thus, a Medicaid termination notice does not immediately create nonpayment. In fact, a resident can appeal a Medicaid termination, and, if the appeal is requested within 10 days, Medicaid coverage will continue at least until the appeal is resolved. See section 431.230(a) of Title 42 of the Code of Federal Regulations.

The resident potentially can make two separate appeals. In the first appeal, as described above, the resident challenges the Medicaid termination. In the other appeal, the resident challenges the nursing home's threatened eviction. See section 483.15(c) of Title 42 of the Code of Federal Regulations.

A nursing home resident can lose Medicaid eligibility either for financial reasons ("too much" income or assets) or clinical reasons (not needing nursing home care). Either type of termination can be appealed. If the appeal centers around whether the resident requires nursing home care, keep in mind that the test is not whether the resident needs the highest level of nursing facility services, but whether the resident needs nursing home care. If the resident's needs could NOT be met in another, "lower" setting (such as an assisted living facility), then the resident should be allowed to stay in the nursing home.

THREE IMPORTANT THINGS TO KEEP IN MIND

1. **Medicaid law requires Medicaid to pay for services pending appeal if the appeal request is made timely.**

Medicaid must continue paying the nursing home as long as the resident appeals the termination within 10 days of receiving the notice. Make your appeal as soon as possible.

2. **A resident should appeal both the Medicaid termination and the nursing home eviction.**

A resident can request two separate appeals—one against the Medicaid termination and the other against the nursing home eviction. Both appeals are made to the state; contact information for appeals should be included in any Medicaid termination notice or nursing facility eviction notice.

3. **A resident can only be evicted for nonpayment only after payment is due, and the resident has received “reasonable and appropriate notice” of the alleged nonpayment.**

Even if Medicaid has ended, the nursing home must give the resident the chance to make payments through private pay, long-term care insurance, or some other source.

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.](#)