

# Nursing Home Debt Collection: Issues and Defense

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*Since 1969, the nonprofit National Consumer Law Center (NCLC) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States.*

*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.*

## Introduction

While most older adults rely on Medicare and Medicaid to help pay for their care, these programs often come with significant out-of-pocket expenses and bills for residents to cover. When a nursing home bill is not paid, facilities may pursue several different strategies to collect payment from residents. In some cases, nursing homes will also pursue third parties for these bills, such as family members and caregivers, using the threat of litigation and potential judgments to pressure families and caregivers into settling these debts out of their own funds.

## Relevant Federal Law

The Nursing Home Reform Act (NHRA) prohibits nursing homes from requiring third-party guarantees of payment and co-signers as a condition of admission to a nursing home.<sup>1</sup> Nursing homes are allowed to require a resident's representative, who has legal access to the resident's funds, to sign an agreement promising to pay the nursing home from the resident's funds. However, the agreement cannot make the representative personally liable for the resident's bill. Despite this clear prohibition on holding third parties personally liable for these debts, nursing homes and collection lawyers have been able to obtain settlements and judgments against caregivers that can total hundreds of thousands of dollars.

## Defending Nursing Home Collection Lawsuits

Nursing home collection lawsuits are often filed with the expectation that a settlement or default judgment will be entered. As a result, these lawsuits largely consist of boilerplate recitations of statutory claims, without any factual support, and with little or no meaningful attorney review. Nursing home residents and third parties who are sued may have a number of defenses that can be raised to attempt to defeat the lawsuit.

Nursing home residents often have defenses related to:

- inflated or disputed nursing home bills;
- the nursing home's failure to seek proper reimbursement from Medicare or Medicaid;

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<sup>1</sup> See 42 U.S.C. § 1395i-3(c)(5)(B)(ii), 42 U.S.C. § 1396r(c)(5)(B)(ii).

- detrimental reliance on the nursing home to submit the Medicaid or Medicare application; etc.

When third parties, such as caregivers and family members, are sued, nursing homes may raise claims of fraudulent conveyance, conversion, doctrine of necessities, and breach of contract. Third parties who are sued may have defenses related to:

- the prohibition of third-party guarantees and imposition of personal liability on the resident's representative under the NHRA;
- factual disputes as to the alleged failure to comply with the admission agreement as the representative or responsible party;
- the lack of any evidentiary support for fraudulent conveyance or conversion claims;
- failure to establish a claim under the doctrine of necessities; etc.

## Conclusion

Be on the lookout for any nursing home debt collection lawsuits against nursing home residents and third parties, as many residents and caregivers who are sued have defenses related to these actions. Responding quickly to a nursing home debt collection lawsuit by filing a motion to dismiss may result in a swift resolution of the case in favor of the resident and/or caregiver. Nursing homes that engage in unlawful collection actions may also be liable for damages under state unfair and deceptive acts and practices (UDAP) laws. In addition to liability under state UDAP laws, debt collection lawyers may also be liable for violations of the federal Fair Debt Collection Practices Act or other state debt collection laws.

## Additional Resources

For more information on this issue, visit the following resources:

- NCLC & Justice in Aging Consumer FAQ: [Can a Nursing Home Force a Resident's Family and Friends to Pay the Bill?](#)
- Consumer Financial Protection Bureau Issue Spotlight: [Know Your Rights: Caregivers and Nursing Home Debt](#)
- [Centers for Medicare and Medicaid Services & CFPB Joint Letter to Nursing Facilities & Debt Collectors](#)
- NCLC Digital Library Article: [Defending Nursing Home Collection Lawsuits](#)
- Justice in Aging Issue Brief: [25 Common Nursing Home Problems—& How to Resolve Them](#)
- NCLER Training: [Representing Older Adults in Nursing Facility Eviction Cases](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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