



# NURSING HOME DEBT COLLECTION PRACTICES PUT RESIDENTS' FAMILY AND FRIENDS AT RISK



**JUSTICE IN AGING**  
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**October 2024**



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## EXECUTIVE SUMMARY

Federal law prohibits a nursing home from conditioning a nursing home resident's admission or continued stay on a third party's personal guarantee to be financially responsible for the resident's bills.<sup>1</sup> Despite this prohibition, nursing homes still attempt various stratagems, through contracting and otherwise, to force financial liability upon residents' family members, friends, and other third parties.<sup>2</sup> These practices impose significant and unnecessary financial strain on family members and other third parties, including lawsuits seeking hundreds of thousands of dollars.<sup>3</sup> This pressure frequently compels adult children and others to pay alleged debts out of their own pockets to protect the nursing home resident.

In response to this problem, the Consumer Financial Protection Bureau (CFPB) conducted a public hearing and released an issue spotlight on problematic nursing home collection practices in September 2022.<sup>4</sup> The CFPB also issued a joint letter with the Centers for Medicare and Medicaid Services (CMS) directed to the nursing home industry and collection lawyers to remind them of their responsibilities under the Nursing Home Reform Act (NHRA), Fair Debt Collection Practices Act (FDCPA), and Fair Credit Reporting Act (FCRA).<sup>5</sup>

Despite the work of CMS and the CFPB, abusive nursing home debt collection actions against third parties continue to be filed. To better understand the scope of this issue, the National Consumer Law Center (NCLC) and Justice in Aging conducted a survey of advocates in the consumer and aging fields between October 2023 and November 2023 about the debt collection practices they have seen employed by nursing homes. The survey asked 14 questions, and we received 90 responses from 27 states and Washington, D.C.

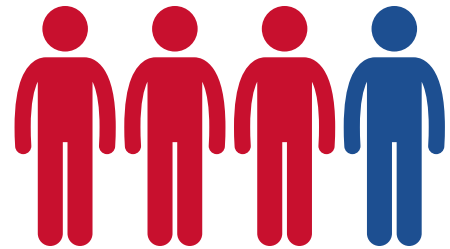
**The survey findings indicate that aggressive and unlawful nursing home debt collection against third parties, such as family members, caregivers, and friends, is still occurring with few signs of stopping.**

The survey findings indicate that aggressive and unlawful nursing home debt collection against third parties, such as family members, caregivers, and friends, is still occurring with few signs of stopping. The practices used by nursing homes and their lawyers to collect on these debts have led to strained familial relationships, nursing homes seeking guardianship of residents in violation of their rights, expensive judgments against family members and friends, and even bankruptcy. Deceptive practices during the nursing home admission process are often used to claim that families and caregivers are on the hook for any bills if payment issues arise.



Highlights of the survey results:

- **Nearly three-quarters of respondents (72%)** said they have seen admission agreements that contain clauses stating that a third party could be financially liable for nursing home debt.
- **The majority (54%)** of respondents indicated that they had seen nursing homes file collection lawsuits against third parties.
- **Residents' children and spouses are particularly at risk** for these collection actions. The majority of respondents who have seen lawsuits filed against third parties to collect nursing home debt (56%) reported seeing lawsuits filed against the residents' children, and nearly half (49%) saw lawsuits against the residents' spouses.



This report begins by summarizing the law in this area and information that has been gathered about the problem of seeking payment from family members. It then analyzes the survey results and concludes with five policy recommendations that federal and state policymakers, enforcement entities, and courts can adopt to address abusive nursing home debt collection practices.

## I. OVERVIEW OF NURSING HOME DEBT COLLECTION AGAINST THIRD PARTIES

### The Problem

In the United States today, roughly 48 million people are caring for adults, and nearly one in six adults is supporting the health and well-being of an older adult through illness or disability.<sup>6</sup> Over 15,000 certified nursing homes provide care for more than 1.2 million residents.<sup>7</sup> Nursing home care is expensive, and residents tend to stay for extended periods. In 2021, the median annual cost of a single room in a nursing home was \$108,405, a 19% increase from 2004 after adjusting for inflation.<sup>8</sup>

Medicaid and Medicare are the primary payers for nursing home care and collectively cover 75% of nursing home residents (62% Medicaid, 13% Medicare).<sup>9</sup> However, nursing home residents

**This report examines the admission, billing, and collection practices of nursing homes governed by the Nursing Home Reform Act (NHRA). It does not address practices utilized by assisted living facilities or other care establishments that fall outside the scope of the NHRA.**

frequently encounter roadblocks during the process to obtain Medicaid or Medicare coverage, and it is not uncommon for a resident to face denials and delays. In some cases, Medicare may be prematurely terminated because of an error by the nursing home. In other cases, because of Medicaid's five-year look-back period for transfer of assets, a resident's Medicaid application may be denied, or it may come with a significant penalty period in which the resident is not eligible for benefits due to an asset transfer several years prior, although the asset is not available to the resident to help pay for the nursing home stay. A facility will demand payment regardless of a pending Medicaid application, even though a resident waiting for Medicaid eligibility likely will not have any ability to pay since Medicaid eligibility depends upon financial need.

Payment problems can also develop when facilities impose various "extra" charges and junk fees on top of the regular monthly charge. Some facilities attempt to impose itemized charges for various services and supplies, even though the Medicare and Medicaid rates should be all-inclusive. Additionally, extra itemized charges to a private-pay resident are only allowed if those charges have been authorized ahead of time in the admission agreement.<sup>10</sup> Bills can escalate quickly for all of these improper "extra" charges.

When residents cannot pay the amount demanded by a nursing home, the facility often directs its attention to residents' family members, friends, and other caregivers. Nursing homes may attempt to hold these third parties personally liable for the resident's debt. Nursing homes may employ a variety of tactics to pressure families and friends into settling debts, including pursuing guardianship or conservatorship to gain control of the resident's assets,<sup>11</sup> threatening to discharge the resident or transfer the resident to another facility far away, and seeking to become the representative payee with control over the resident's funds.

Nursing homes have been suing residents' children, siblings, spouses, and friends for alleged debts for decades, but advocates report increased levels of aggression in recent years.<sup>12</sup> For example, a KFF (formerly the Kaiser Family Foundation) and NPR report from 2022 found that in Monroe County, New York, 24 federally licensed nursing homes filed 238 debt collection suits from 2018 to 2021 seeking almost \$7.6 million, and two-thirds of the lawsuits primarily sought payment from third parties (families and friends) and not the residents.<sup>13</sup>

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Nursing homes often base their claims on admission agreements signed by third parties. These admission agreements purport to make the signer responsible for ensuring that the nursing home's bills are paid from the resident's money. They are generally one-sided in the nursing home's favor, as facilities take advantage of the circumstances of most nursing home admissions.

People often enter nursing homes in times of crisis, often immediately after a hospitalization, when they cannot return home and are being pressured by the hospital to leave. Family members, friends, caregivers, and other third parties are in a precarious position – if they are asked to sign an admission agreement as a “responsible party,” for example, they will feel obligated to do so. They may believe that they are agreeing only to be a contact person or the resident's agent, with no sense that the nursing home might someday argue that they are personally financially liable for the resident's debt.

## The Nursing Home Reform Act

In 1987, Congress passed the federal Nursing Home Reform Act (NHRA) in response to public attention and a significant study from the Institute of Medicine.<sup>14</sup> Among other things, the NHRA bans third-party financial guarantees as a condition of a resident's admission or continued stay in a nursing home. Specifically, a facility must “not request or require a third-party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.”<sup>15</sup> In other words, a nursing home cannot require a third party, such as a family member or other caregiver, to be personally financially liable for a resident's debt. The rationale for this protection is that nursing home debt can be large and unpredictable, and the Medicaid program provides a backstop when a resident spends down their savings.

Of course, because nursing home residents are often not capable of handling their own finances, a resident may need a representative. Accordingly, while the NHRA bans third-party guarantees, it also provides that the prohibition on guarantees:

[S]hall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (***without incurring personal financial liability***) to provide payment from the resident's income or resources for such care (emphasis added).<sup>16</sup>

Nursing home admission agreements often use the term “responsible party” for these persons and, under the plain language of the NHRA, admission agreements ***cannot make them personally financially liable*** for the resident's bill or any damages related to any alleged breach of the agreement.

Unfortunately, however, nursing home admission agreements often contain problematic provisions related to financial liability, and such agreements are signed by residents' family and friends on a regular basis. The family members and friends may feel that they have little to no negotiating power due to "the stressful and emotional nature of admission, the complicated language in admission agreements, and the inadequate—at times, misleading—guidance provided by nursing homes."<sup>17</sup> If a family member or friend helping a new resident check into the facility objects to signing the agreement because they do not have legal access to the resident's funds, the nursing homes often will still require the family member or friend to sign the agreement.

**In many cases, there is barely any discussion or explanation of the documents families and friends are being asked to sign.**

In many cases, there is barely any discussion or explanation of the documents families and friends are being asked to sign. They are given a stack of forms and told, "sign here, sign there."<sup>18</sup> Some facilities may convey to caregivers that they are only being asked to sign the agreement to provide an emergency contact or to facilitate the exchange of information between the nursing home and Medicaid when, in fact, the documents indicate that the person signing assumes

responsibility for payment.<sup>19</sup> Additionally, misrepresentations by the nursing home staff can lead family members and friends to believe they are legally liable for the resident's bill. In general, many people do not understand the implications of signing these documents and what it could mean for their financial situation if there is an issue with the resident's payment.

Despite the NHRA's clear language prohibiting the imposition of personal financial liability upon a third party, some nursing homes attempt to use agency-type provisions to impose financial liability on the third party. The language generally purports to impose a duty on the "responsible party" to pay the resident's debts to the nursing home from the resident's resources and to take all necessary steps to obtain Medicaid coverage for the resident. Then, if a resident's bill is allegedly unpaid, for any reason, the nursing home seeks payment from the third party, arguing that they failed in their duties under the agreement to pay the facility with the resident's money or to arrange for Medicaid eligibility.<sup>20</sup>

Other admission agreements, following a different and clearly illegal strategy, include joint and several liability clauses that assign to third parties the same personal liability for payment as the resident.<sup>21</sup> Some request a personal guarantee of payment from the resident's funds.<sup>22</sup> Other clauses may be confusing and internally contradictory, such as by initially stating that the person signing does not personally guarantee the resident's costs but later stating that the person is personally liable for any breach of the contract, including failing to make sure the nursing home bill is paid.<sup>23</sup>



The common denominator in these contracts is the nursing home’s attempt to collect money from third parties, regardless of the federal law prohibiting third-party financial liability. If a resident’s bill goes unpaid or there is an issue with Medicaid or Medicare coverage, the nursing home often files suit against the person who signed the admission agreement as the “responsible party” or “representative.” These lawsuits seek to impose personal liability on the person for the resident’s bill, most often due to an alleged breach of their supposed obligations under the admission agreement’s “responsible party” clause.<sup>24</sup> Many of these lawsuits result in costly default judgments or settlements, as most people are unaware that federal law prohibits personal liability on third parties, cannot afford a lawyer to represent them, or are unwilling to run the risk of a negative court ruling.

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## **Fraudulent Conveyance, the Doctrine of Necessaries, Filial Support, and Other Claims Brought by Nursing Homes to Collect Debts**

In addition to breach of contract claims under the admission agreement, nursing homes often bring other claims against third parties, whether they signed an admission agreement or not. These include fraudulent conveyance/conversion, the Doctrine of Necessaries, and filial support claims.

**Many of these lawsuits simply allege that because the nursing home bill was unpaid, there can be no explanation other than some kind of fraud or theft by a third party, even if that person never had a power of attorney or any access to the resident’s funds.**

Under fraudulent conveyance/conversion claims, nursing homes allege that third-party caregivers or family members fraudulently transferred away or stole the resident’s income or resources to benefit themselves and avoid paying the nursing home. While financial exploitation is a genuine concern for nursing home residents, nursing homes often make these types of allegations despite having no evidence to show that income or assets were allegedly transferred away or stolen or that any actual financial exploitation has occurred. Many of these lawsuits simply allege that because the nursing home bill was unpaid, there can be no explanation other than some kind of fraud or theft by a third party, even if that person never had a power

of attorney or any access to the resident's funds. Without details of what was allegedly improperly transferred away or stolen, it can be challenging for the person being sued to be able to defend themselves, particularly when many do so *pro se* because they cannot afford or find an attorney to assist them in defending the case.

Cases brought under the doctrine of necessities or filial support claims are similarly difficult for spouses and children of residents.<sup>25</sup> Many states still have a doctrine of necessities or filial support law that imposes liability for medically necessary care, such as nursing home care, on spouses (the doctrine of necessities) and children (filial support).<sup>26</sup> Spouses and children are often not aware of these laws at the time their loved one is admitted to the nursing home, and even spouses and children who have no contact with the resident can find themselves facing claims that they are financially responsible for nursing home bills.<sup>27</sup>

In general, these laws were enacted a century ago, prior to the creation of Social Security. They are largely ignored as anachronisms, but because they are still on the books, they can be exploited by nursing homes and their collection attorneys. These antiquated laws place an undue burden on families and can result in significant financial hardship, particularly on women, who generally have longer life expectancies and are therefore more likely to face claims involving the doctrine of necessities.<sup>28</sup> Living in a state where these laws are still valid does not necessarily mean that a resident's spouse or child is automatically liable for the debt, but practically speaking, it is difficult to raise defenses in a collection action under one of these claims without an attorney, and even a represented party faces significant difficulties.

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## **How Courts Respond to Nursing Home Debt Collection Lawsuits**

Nursing home debt collection lawsuits against third parties, such as family members and other caregivers, are generally filed in state courts. How courts handle these collection lawsuits varies depending on the state, the judicial district, and sometimes the judge assigned to oversee the case.<sup>29</sup> Many courts have correctly held that nursing home collection lawsuits against third parties are violations of the NHRA.<sup>30</sup> Likewise, some courts have held that as a matter of agency law, liability may not be imposed upon a third-party representative who signs only on behalf of the resident as the agent or representative under a power of attorney or other authority.<sup>31</sup>

Yet, despite the explicit federal prohibition on holding third parties liable for a resident's debt under nursing home admission agreements, some courts have upheld nursing home claims against third parties. For example, some courts in New York and Connecticut have incorrectly held that personal financial liability can be imposed on a third party who signs an admission agreement either as a representative or "responsible party" for breach of contract if they fail to pay for resident's care with the resident's funds.<sup>32</sup> These decisions appear to focus on the language of the contract. So long as the language does not require the third party to guarantee the resident's payment, courts wrongly conclude that such a provision is consistent with the NHRA, even if it assigns personal liability for failure to make payments.

The CFPB's Issue Spotlight highlighted "emerging risks" within long-term care, including nursing home admission agreements that attempt to evade the federal law's protections. As the CFPB explained:

Although the NHRA prohibits nursing homes from requesting or requiring a third party to personally guarantee the cost of nursing home care...some nursing home admission agreements include terms that try to hold a third party personally liable.<sup>33</sup>

The CFPB emphasized that such "practices of nursing homes...may violate federal laws administered by the CFPB and Centers for Medicare & Medicaid Services (CMS)."<sup>34</sup>

## The Impact on Family Members, Friends, and Other Caregivers

Family members, friends, and other caregivers are often unaware that federal law sets standards for nursing home admission agreements. Additionally, they often lack the resources to properly respond to a lawsuit or find legal representation. When they receive notices of debt collection actions being brought against them, they are often confused or misled, which can result in a large number of problematic default judgments and settlements. The CFPB noted that "caregivers have been subjected to wage garnishment and have even lost their homes after being pursued by nursing homes for debts associated with family members' or friends' costs of care."<sup>35</sup>

Nearly eight in 10 caregivers deal with out-of-pocket expenses related to looking after their loved ones.<sup>36</sup> The financial strain of caregiving is even greater on women and Black and Latino/Hispanic caregivers.<sup>37</sup> A 2021 AARP report found that medical costs make up 17% of a caregiver's out-of-pocket expenses.<sup>38</sup> Nursing

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home expenses not covered by Medicaid are a particular pain point for caregivers of many income levels. Even higher-income caregivers in these situations are not protected, with 56% reporting financial strain as a result of the high costs of nursing home care.<sup>39</sup> Older caregivers in retirement and on fixed incomes are especially at risk of financial setbacks because of a loved one's nursing home bills. These collection actions can force caregivers into financial ruin in order to ensure that their loved ones receive the care they need in their final years.

The financial strain from these collection attempts can also negatively impact familial and personal relationships. Advocates have reported that the stress of these cases has caused caregivers who are sued to cease contact with the resident in the nursing home, in some cases never speaking with them again.

## The Impact on Nursing Home Residents

In addition to the negative impacts on nursing home residents' relationships with caregivers and family members, residents also face improper claims asserted against them personally. In many cases, a nursing home bill has accrued not because the resident refused to pay but due to an issue with Medicaid or Medicare, resulting in a large balance that the resident simply does not have the funds to cover. In some cases, as illustrated below by the experience of Robyn King, the eligibility problem has been caused by the nursing home's own negligence. Residents themselves are also frequently sued by nursing homes to collect on these debts, in addition to their family members and other caregivers, making it difficult for them to focus on their recovery or make plans to return home if they are physically able.

In the event of nonpayment, nursing homes sometimes evict residents without following proper discharge steps.<sup>40</sup> Failing to abide by safe discharge procedures can have devastating results. In a troubling case in California, a nursing home resident with an unpaid bill was dropped off on a sidewalk near a homeless encampment in the middle of the night and was left in a wheelchair without his insulin medication, putting him at risk of falling into a coma.<sup>41</sup> The nursing home was later sued by the Los Angeles City Attorney for failing to abide by proper discharge procedures.<sup>42</sup> The Inspector General for the Department of Health and Human Services investigated the issue of improper nursing home discharges, finding "concerns about weaknesses in the safeguards to protect nursing home residents from harm that may result from inappropriate facility-initiated discharges."<sup>43</sup>

Nursing homes also sometimes improperly initiate guardianship proceedings to gain control over a resident's assets,<sup>44</sup> which results in residents losing their rights, forces families into costly legal ordeals, and increases the likelihood of financial exploitation.<sup>45</sup> Additionally, some advocates have shared with NCLC that nursing homes will also quietly and informally

“blacklist” residents, resulting in other area nursing homes refusing to admit them while the first nursing home’s bill remains allegedly unpaid.

## Stories of Friends and Family Pursued for Nursing Home Debt

The impact of these collection actions on family members, caregivers, and other third parties is best represented in the actual stories below.

### Barbara Robinson

*New York*

*Relation to Nursing Home Resident: Friend*

**Sued for: Over \$21,000**

Ms. Robinson shared her story with CBS Morning News.<sup>46</sup> Ms. Robinson, an 81-year-old on Social Security benefits, was sued for \$21,000 for her deceased friend’s nursing home bill. Ms. Robinson helped her friend get admitted to a nursing home following a hospital stay. She signed the admission agreement as her friend’s “responsible party” and worked with the nursing home to ensure it had all the paperwork needed to enroll her friend in Medicaid. Ms. Robinson was told by the nursing home that it had everything needed to get paid and that there was nothing else for her to do. But six months after her friend passed away, the nursing home’s attorneys began sending her collection letters and ultimately sued her for breach of contract and fraudulent conveyance. In the lawsuit, the nursing home accused Ms. Robinson of “fraudulently conveying” her friend’s assets to herself, even though her friend had no assets and only received a limited amount of SSI benefits each month. The court ultimately dismissed the lawsuit against Ms. Robinson after she received help from a legal aid organization to fight the case.

“

**They caused me a lot of grief...I thought you can't do that to somebody. You can't knock on somebody's door and say you need to pay this bill...It's like they look around and say, 'Who can we try and get this money out of?'**

BARBARA ROBINSON<sup>47</sup>

”



## Robyn King

Ohio

*Relation to Nursing Home Resident: Daughter*

***Sued for: Almost \$80,000***

Ms. King testified at a U.S. Senate hearing about being sued by a nursing home for her mother's nursing home debt.<sup>48</sup> Ms. King and her five siblings helped her mother get admitted to the nursing home after her mother's struggle with Alzheimer's prevented her from being able to live on her own. Ms. King signed the admission agreement as her mother's representative and checked a box in the contract that said she would not be financially responsible for her mother's bill. In late 2019, Ms. King went to the nursing home to complete paperwork in their office to help get her mother's Medicaid reinstated, which she assumed was taken care of, as she did not hear anything from them. Several months after the pandemic hit, the nursing home finally informed Ms. King that her mother's Medicaid application had been denied several months prior, and a substantial bill had since accrued that she now needed to pay to keep her mother in the nursing home. Ms. King was then personally sued by the nursing home for close to \$80,000 just two days before her mother passed away. The case against Ms. King was ultimately dismissed with the help of a local legal aid organization. However, at the time of her testimony, the nursing home was continuing to pursue her mother's estate for the outstanding debt, causing an ongoing impact on her family's well-being.

“

**I never had time to grieve. I kept so much inside; the stress was unbearable. I thought, I won't be able to afford my mortgage – I am definitely going to lose my house. I could face a garnishment of my paycheck and be forced to live on a reduced income when money was already tight to begin with. What will I tell my kids? What does it mean to have this kind of judgment against you? How will that impact the rest of my life? At one point, I even thought – I'd rather be with my mother. I felt defeated. I had nothing left to give.**

ROBYN KING<sup>49</sup>

”

## Marcus Williams

Illinois

Relation to Nursing Home Resident: Grandson

**Billed for: Over \$10,000**

Mr. Williams testified at the September 2022 CFPB public field hearing on Nursing Home Debt<sup>50</sup> about his experience dealing with his late grandmother's outstanding nursing home debt. Mr. Williams' grandmother was in a nursing home until she passed away. His grandmother received Medicaid, and the nursing home received his grandmother's pension and social security checks. Mr. Williams never received a bill from the nursing home while his grandmother was alive, and the nursing home told him that they would take care of everything. After his grandmother passed away, the nursing home sent Mr. Williams a notice saying they made a mistake and demanded that Mr. Williams pay \$10,000. At the time of the CFPB field hearing, Mr. Williams shared that he had been dealing with the collection litigation for two years, and it was still ongoing.

“

**Never received a bill...Then, all of a sudden, after she passed, I get a notice that they made a miscalculation and started sending me a bill for \$10,000...It's a burden. I've been in court now for two years as part of the probate, and it's looking like once if they don't win in probate, they're going to come after me.**

MARCUS WILLIAMS<sup>51</sup>

”

## II. NCLC SURVEY RESULTS

### NCLC Survey of Consumer and Aging Advocates

To obtain more detailed information about the nursing home debt collection outlined above, NCLC and Justice in Aging conducted a survey of consumer and aging advocates in October and November 2023. Our survey asked 14 questions developed in consultation with advocates working on this issue.

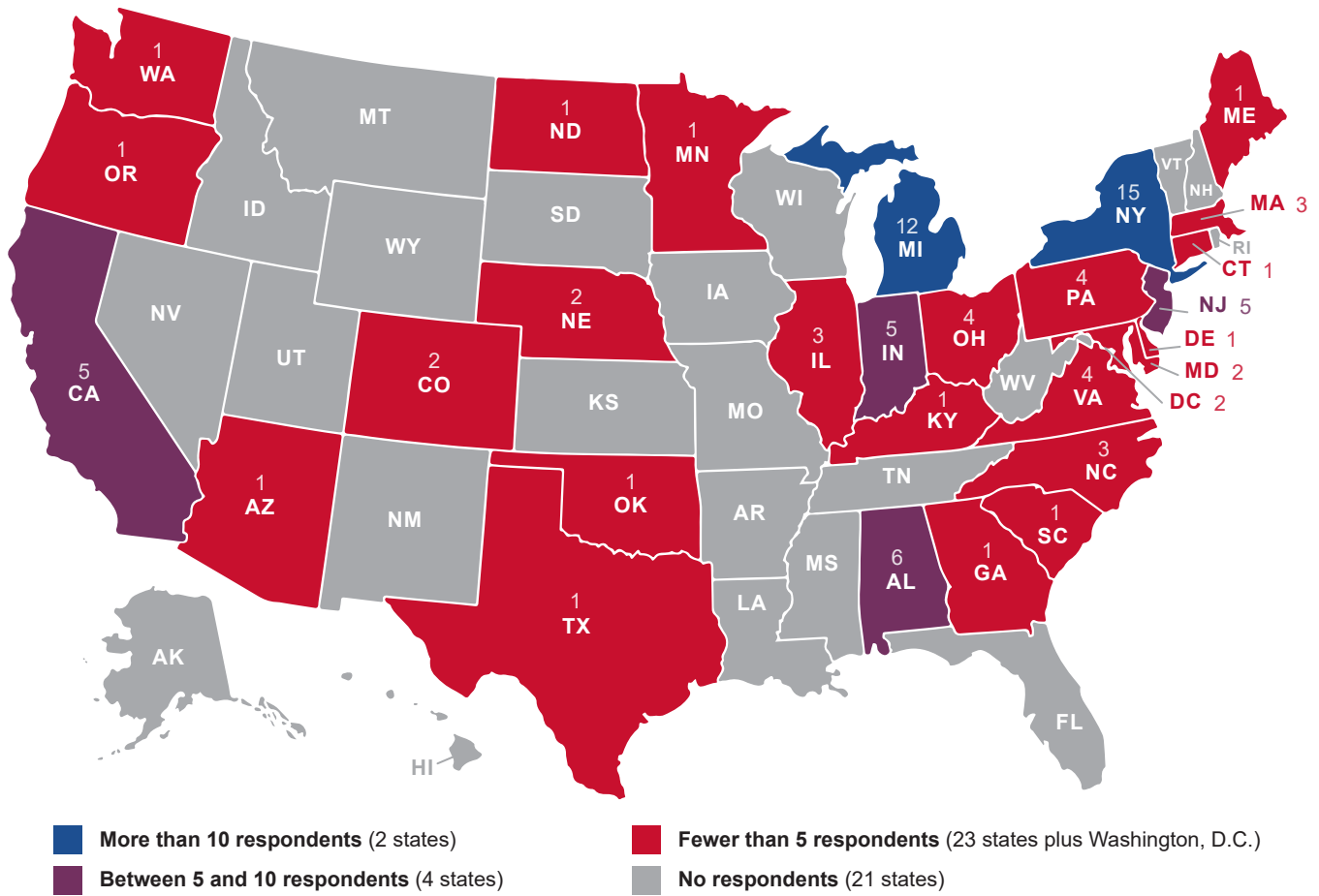
We received 90 responses from 27 states and Washington, D.C. More than two-fifths of respondents (43%) worked in legal services or at a non-profit law office,<sup>52</sup> and nearly one-third (31%) worked at a private elder law firm. The remaining quarter of the respondents worked at other non-profits (9%), government agencies (8%), other employers (7%), or private consumer law firms (2%). Other employers included a general practice law firm, a private long-term care coordinator, a state ombudsman, a non-profit independent living center, a public agency, and trust services.

**Table 1: Survey Respondent Distribution According to Type of Practice (n=90)**

Type of Work	Number of Respondents	Percent
<b>Legal services</b>	39	43%
<b>Private elder law firm</b>	28	31%
<b>Other non-profit</b>	8	9%
<b>Government agency</b>	7	8%
<b>Other</b>	6	7%
<b>Private consumer law firm</b>	2	2%

The 90 respondents represented a broad array of jurisdictions. The following map gives a breakdown of responses received from these jurisdictions.

**Map: Survey Respondent Distribution According to State (n=90)**



The survey consisted of 14 multiple-choice, checkbox, or yes/no questions. Each question was optional, and some respondents (from 4 to 22 per question) skipped questions.

Additionally, each question included the field “other” with an opportunity to write a short narrative response, which was paired with an optional free-form text field that invited survey respondents to add any additional comments about that question. In the sections below, we summarize data from the 14 questions and also include or paraphrase some of these narrative responses.

Finally, the survey included a request for sample admission agreements that were signed by third parties and sample pleadings and collection materials from nursing homes collecting from third parties. Redacted versions of the documents received are accessible in an online appendix at [www.nclc.org/nursing-home-debt-appendix](http://www.nclc.org/nursing-home-debt-appendix).<sup>53</sup>

## Common Problematic Admission Agreement Practices

### 1. *Reliance on Third-Party Signatories in Nursing Home Admission Agreements*

The NCLC survey asked respondents:

**Have you seen nursing homes obtain the signatures of any of the following parties on a nursing home admission agreement?**

Respondents were given 13 options. They were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 81 responses to this question. Nearly four out of five respondents (79%) indicated that they have seen nursing homes obtain the signatures of the resident's children on nursing home admission agreements. Nearly three-quarters (73%) have seen them obtain the signature of the resident's spouse, and more than two-thirds of respondents (68%) have seen nursing homes obtain signatures from the resident's agent under power of attorney (68%). Slightly more than two-fifths of respondents (41%) reported seeing the resident's guardian sign. And roughly a quarter of respondents had seen the resident's siblings (28%), other family members (25%), or healthcare proxy (23%) sign. Approximately one in seven respondents have seen nursing homes obtain signatures from the resident's friends (15%), grandchildren (14%), or nieces/nephews (14%). A few respondents observed nursing homes obtaining signatures from the resident's parents (9%) or trustee (5%).



**Table 2: Percent of respondents who saw nursing homes obtain third-party signatures on nursing home admission agreements (n=81)**

<b>Third Party Signing on Nursing Home Admission Agreements</b>	<b>Percent*</b>
<b>Resident's children</b>	79%
<b>Resident's spouse</b>	73%
<b>Resident's agent under Power of Attorney</b>	68%
<b>Resident's Guardian</b>	41%
<b>Resident's siblings</b>	28%
<b>Resident's other family members</b>	25%
<b>Resident's healthcare proxy</b>	23%
<b>Resident's friends</b>	15%
<b>Resident's grandchildren</b>	14%
<b>Resident's nieces/nephews</b>	14%
<b>Resident's parents</b>	9%
<b>Resident's trustee</b>	5%
<b>Other</b>	5%

*\*Total is greater than 100 because respondents could select multiple responses.*

Some narrative comments from respondents to this question described various situations in which they saw third parties, including spouses, non-married partners, relatives, and even unrelated caregivers, being forced to sign admission agreements.

“

I have seen an admissions agreement "signature," purportedly by the patient/resident, but clearly forged by nursing home staff because the patient was admitted after a stroke and had no ability to write or hold a pen at the time of admission. I have also seen a former spouse (divorced 20 years with no financial relationship to the resident; no control of his funds) instructed to sign both the admissions agreement/responsible party agreement. Most incredible, I have seen a young person (in her 20s) instructed to sign the admissions agreement/responsible party agreement when she accompanied her older loved one to be admitted to a facility. They were NOT family. Their relationship: the new resident was the ex-boyfriend of the young person's grandmother. All of these scenarios resulted in litigation, and the young person described above...ended up with a large default judgment and filed [for] bankruptcy as a direct result.

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

## 2. Third-Party Financial Responsibility Clauses in Nursing Home Admission Agreements

The NCLC survey asked respondents:

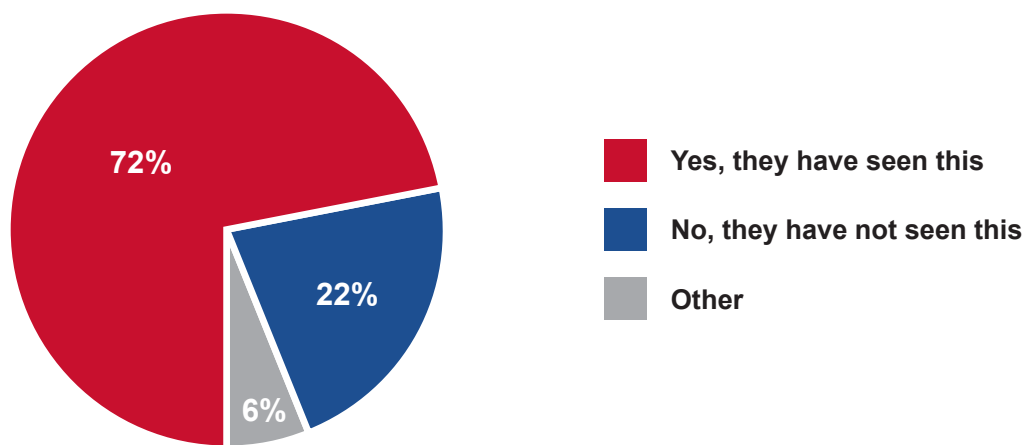
**Have you seen admission agreements that contain clauses that state that the third-party signer could be financially responsible for unpaid nursing home expenses or damages if they breach the agreement?**

We received 85 responses to this question. Nearly three-quarters of respondents (72%) said they have seen admission agreements that contain clauses stating that a third party could be financially liable for nursing home debt, and 22% said that they have not seen this. The remaining 6% answered “other.”

**By signing this Agreement, however, the Responsible Party personally guarantees continuity of payment from the Resident's funds to which he/she has access or control and agrees to arrange for third-party payment if necessary, to meet the Resident's cost of care.**

EXCERPT FROM ADMISSION AGREEMENT OF ELDERWOOD AT HAMBURG<sup>54</sup>

**Chart 1: Percent of respondents that observed admission agreements with clauses holding third-party signer responsible for nursing home debts (n=85)**



Some respondents provided narrative comments describing admission agreements stating that third parties are not personally liable for the resident’s bill that appeared to comply with the NHRA. However, these respondents reported that these agreements also contain contradictory clauses that state that signing third parties are personally liable for any breach of contract.



**Not explicitly, in fact, they explicitly state that the "responsible party" is not personally liable, but then additional language clearly creates a contract under which the third party agrees to ensure payment of the nursing home bill.**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA



**I realize that we may have overlooked provisions like saying the third party was liable for breach (even though it might have said 'no personal liability' earlier in the document).**

LEGAL SERVICES ATTORNEY FROM VIRGINIA



“

**Yes and no - the agreements in the Philadelphia area generally at least feign compliance with federal nursing home regs (not requiring 3rd party guarantor), but just barely.**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

Several respondents raised other issues they have seen with admission agreements signed by third parties.

“

**The agreements do not show all documents given during admission, or the applicant wasn't given copies of all documents.**

LEGAL SERVICES ATTORNEY FROM TEXAS

”

“

**Facility agreements sometimes say it is voluntary for a third party to sign, but the third party is told the resident will not be admitted without the third party signature. This is often done in situations where the resident is not competent.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM INDIANA

”

“

**It's been several years since I've seen admissions paperwork asking for a guarantor, EXCEPT the pharmacy paperwork generally wants the resident's sponsor to guarantee payment.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM ALABAMA

”

“

Unfortunately, being mindful how a person answers that question has also played in the attention or care that the client receives.

NON-PROFIT EMPLOYEE FROM CALIFORNIA

”

“

More than this, in Nebraska, we're seeing significant delays in Medicaid approvals and nursing homes suing residents for huge bills.

PRIVATE ELDER LAW FIRM ATTORNEY FROM NEBRASKA

”

### *3. E-Signatures and Nursing Home Admission Agreements*

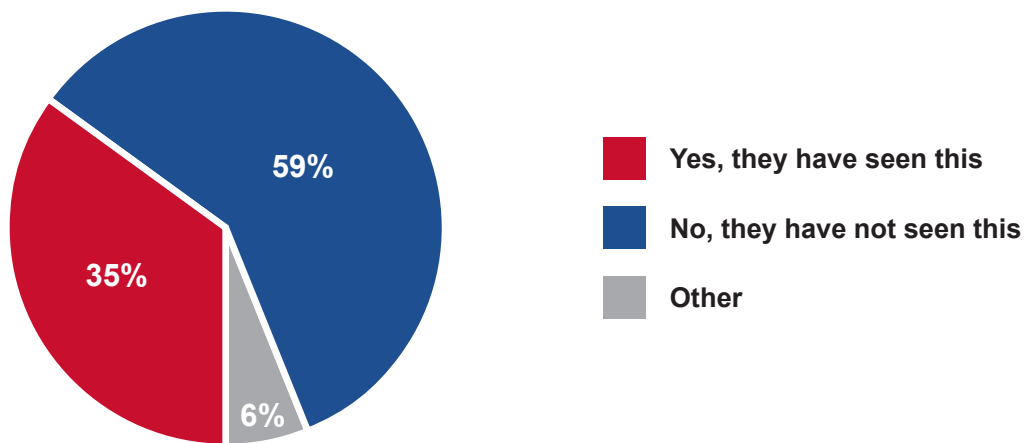
The NCLC survey asked respondents:

**Have you seen admissions agreements that were electronically signed by the residents or third-party signers (using a tablet, computer, or some other e-signing program)?**

We received 86 responses to this question. More than one-third of respondents (35%) said that they have seen admissions agreements that were electronically signed by the residents or third-party signers, while 59% said that they have not seen this. The remaining 6% answered “other.”



**Chart 2: Percent of respondents that observed nursing home admission agreements signed electronically (n=86)**



Some narrative comments from the respondents raised issues with these electronic signatures, as described below.

“

**I have not seen, but have been told that some nursing homes wanted to send over documents to sign via email.**

LEGAL SERVICES ATTORNEY FROM TEXAS

”

“

**Signing electronically, I think, is an easier way of forgery. (Sure, it can happen with manuscript as well.)**

NON-PROFIT EMPLOYEE FROM CALIFORNIA

”

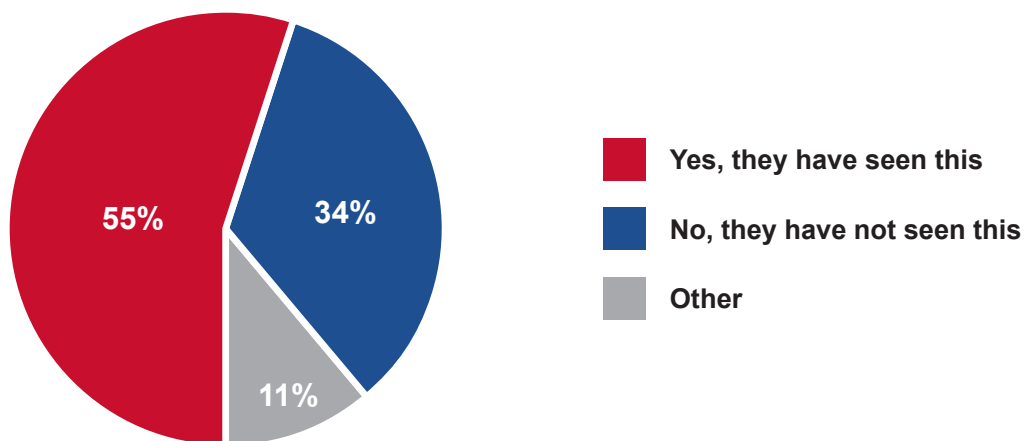
#### ***4. Arbitration Clauses in Nursing Home Admission Agreements***

The NCLC survey asked respondents:

**Have you seen arbitration clauses in admission agreements?**

We received 85 responses to this question. More than half of the respondents (55%) had seen arbitration clauses in nursing home admissions agreements, while 34% had not. The remaining 11% answered “other.”

**Chart 3: Percent of respondents that observed nursing home admission agreements with arbitration clauses (n=85)**



Some respondents provided more information in their narrative responses as to why they selected “other,” including that they were unsure and could not remember if they had seen arbitration clauses in nursing home admission agreements.

Several respondents reported other issues with arbitration clauses in nursing home admission agreements in the narrative comments, as outlined below.

“

**Arbitration clauses included, signed by the resident, but not signed by the nursing home.**

LEGAL SERVICES ATTORNEY FROM D.C.

”

“

**Have seen but not litigated arb clauses in nursing home contracts; they have not moved to arbitrate counterclaims in court in debt defense cases.**

LEGAL SERVICES ATTORNEY FROM ILLINOIS

”

“

**I have seen nursing facilities refuse to admit the patient where the POA Agent or a Guardian of the Estate wanted to strike the arbitration clause from the overall admission contract.**

PRIVATE ELDER LAW FIRM ATTORNEY IN NORTH CAROLINA

”

“

**This is more prevalent in facilities with buy-in life care contracts where residents pay a fee upfront for admission, but I have seen it in other facilities as well.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM INDIANA

”

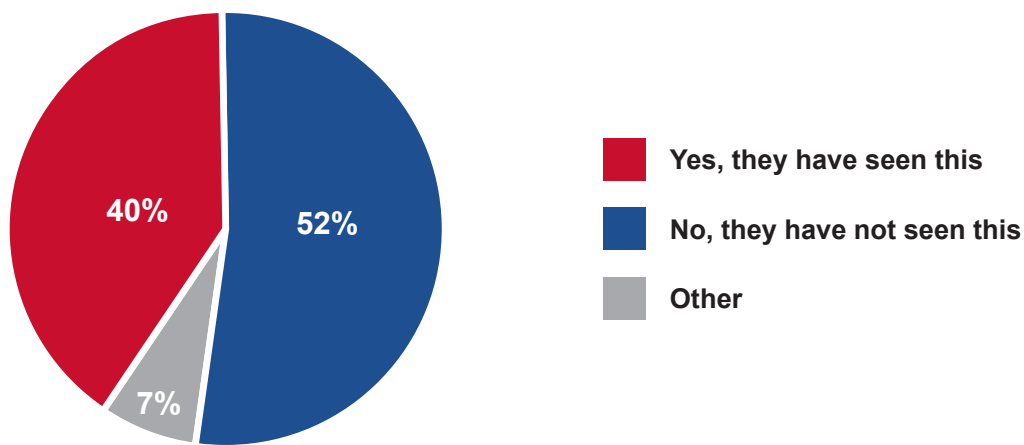
### *5. Third-Party Objections to Admission Agreements*

The NCLC survey asked respondents:

**Have you seen a third party who was forced to sign a resident's admission agreement even after they objected (including objections that they didn't have authority to sign or the ability to access the resident's funds)?**

We received 82 responses to this question. Two-fifths of respondents (40%) indicated that they have seen a third party who was forced to sign a resident's admission agreement even after they objected, and 52% said that they have not seen this. The remaining 7% answered “other.”

**Chart 4: Percent of respondents that observed a third party required to sign a nursing home admission agreement despite objection (n=82)\***



*\*Total is greater than 100 because of rounding.*

Some of the comments provided in respondents' narrative feedback indicated that many third parties who sign these agreements do not know enough about their own rights to object to signing or are actively misled by the nursing home to induce them to sign.

“

**People don't know what they're signing and/or are actively misled about what they're signing ('this is just to get him checked in'), and/or they would sign anything to get their loved one the care they need.**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

“

**Third parties rarely know to object if the contract is signed before consulting our law firm.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM MARYLAND

”

Some respondents reported that signing is a requirement for admission.

“

**Not so much that they're "forced" to sign, but if they want the resident admitted, a signature is a requirement.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM ALABAMA

”

“

**The nursing home tells them the signature is required for admission, and they don't have any other options.**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

“

**We have seen instances of undue pressure where it was indicated that admission of the patient was contingent on getting a third party to sign the admission agreement.**

LEGAL SERVICES ATTORNEY FROM NEW YORK

”

“

**Nursing homes have told family members that they can't admit unless someone signs.**

LEGAL SERVICES ATTORNEY FROM TEXAS

”

“

**Because they were told that signing wasn't a big deal, or that there was no other way to get their loved one admitted, I've seen third parties willingly sign - they didn't need to be 'forced.'**

LEGAL SERVICES ATTORNEY FROM NEW YORK

”



## Abusive Nursing Home Debt Collection Practices Against Third Parties

### 6. Common Nursing Home Debt Collection Practices Against Third Parties

The NCLC survey asked respondents:

**Have you seen nursing homes (or debt collectors acting on their behalf) engage in any of the following practices to collect a resident's nursing home debt from a third party?**

Respondents were given eight options and were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 79 responses to this question. More than three-quarters of respondents reported seeing nursing homes (or debt collectors acting on their behalf) send collection letters, emails, texts, or social media messages to a third party to collect a resident's nursing home debt. Nearly two-thirds (63%) reported seeing nursing homes file collection lawsuits against a third party, and more than half (53%) reported nursing homes making collection calls to or leaving voicemails for a third party. Approximately one in seven respondents (14%) reported seeing nursing homes file a lien against a third party's home to collect a resident's nursing home debt. A few respondents reported they had seen nursing homes levy against the bank account of a third party (11%) or garnish wages of a third party (4%). A few respondents (11%) reported that they had not seen any of these methods of nursing home debt collection.

**“Legal Authority to Access Resident’s Funds...” You have asserted that the Representative has legal access to and control over the Resident’s income, assets, personal and real property, and resources... You agree that if any of these Resources transfer by operation of law while the Resident still has outstanding debts to the Facility and such transfer causes the Resident’s remaining resources to be insufficient to pay the debt in full, then the Representative agrees to be personally responsible for the remaining debt to the Facility.**

EXCERPT FROM COMPLAINT FILED BY WARREN MANOR<sup>55</sup>

**Table 3: Percent of respondents who observed a particular method of debt collection to collect a nursing home debt from a third party (n=79)**

Method of Nursing Home Collection	Percent*
Send collection letters, emails, texts, or social media messages to a third party	76%
File a collection lawsuit against a third party	63%
Make collection calls to or leave voicemails for a third party	53%
File a lien against a third party's home	14%
Levy against the bank account of a third party	11%
None of the above	11%
Other	5%
Garnish wages of a third party	4%

\*Total is greater than 100 because respondents could select multiple responses.

Some respondents provided the following narrative comments to elaborate on the collection practices they have seen in nursing home debt collection cases against third parties:

“

**I have a case where this happened, and the third party in question is not a relative of the resident, did not sign any admission agreement or other paperwork, and did not have power of attorney or any other type of fiduciary relationship.**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

“

**I've never seen a threat of \*personal\* liability against a POA Agent or Guardian unless there was also an allegation that the fiduciary had misused the patient's funds.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM NORTH CAROLINA

”

“

**On the bank account levy, I've seen a collection attorney refuse to release improperly frozen social security funds, even after the 3rd party provided documentation of the exempt funds to counsel.**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

“

**Nursing home seeking payment from our client for husband's stay.**

LEGAL SERVICES ATTORNEY FROM INDIANA

”

“

**We received a request to assist a client with a confession of judgment that she was being asked to sign that would make her responsible for her husband's \$56,400 bill for skilled nursing services at Monroe Community Hospital.**

LEGAL SERVICES ATTORNEY FROM NEW YORK

”

“

**The nursing home sent threatening letters to the resident's family for the balance owed.**

LEGAL SERVICES ATTORNEY FROM OKLAHOMA

”

## 7. Other Nursing Home Debt Collection Practices

The NCLC survey asked respondents:

**Have you seen nursing homes (or debt collectors acting on their behalf) engage in any of the following additional collection practices?**

Respondents were given five options and were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 68 responses to this question. Almost half of the respondents (46%) reported that they had seen nursing homes (or debt collectors acting on their behalf) file a claim against a resident's estate. Nearly two-fifths of respondents (38%) reported that nursing homes had attempted to obtain guardianship of the resident, with a legal services attorney from Massachusetts clarifying in a comment that they had seen conservatorships and not guardianships. More than a third of respondents (35%) indicated that they have not seen any of these collection practices. One in 10 respondents (10%) indicated that they had seen nursing homes sell a nursing home collection account to a debt buyer.

**Table 4: Percent of respondents who observed other debt collection practices to collect a nursing home debt (n=68)**

<b>Additional Debt Collection Practices</b>	<b>Percent*</b>
<b>File a claim against a resident's estate</b>	46%
<b>Attempt to obtain guardianship of the resident</b>	38%
<b>None of the above</b>	35%
<b>Sell a nursing home collection account to a debt buyer</b>	10%
<b>Other</b>	7%

*\*Total is greater than 100 because respondents could select multiple responses.*

Some respondents expanded upon their answers to this question, as outlined in some of the narrative comments below.

“

**Guardianships to process Medicaid claims where the family refuses to be bothered.**

GENERAL PRACTICE LAW FIRM ATTORNEY FROM MICHIGAN

”

“

**Appoint a guardian to collect ward money to pay the nursing home.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM MICHIGAN

”

“

**There is a nursing home in Indiana that has an attorney on staff who will file for guardianship of their residents.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM INDIANA

”

“

**Threaten discharge (without a safe discharge plan); have nursing home staff, including social worker, pressure resident into doing what they want (paying, doing a Medicaid spend-down, etc.); refusing to re-admit resident to the nursing home after a temporary transfer to the hospital, until she signed something giving the nursing home full access to her bank account (the resident was legally blind and forced to sign the papers while lying on a gurney, having no idea what they were or opportunity to review them with someone who could read and understand them; the nursing home went on to drain tens of thousands in exempt funds from her bank account).**

LEGAL SERVICES ATTORNEY FROM PENNSYLVANIA

”

“

**Facilities sometimes seek the appointment of a guardian for a patient who is in arrears. I believe NC law forbids a nursing home from becoming Guardian directly. NC's judicial process for guardianship is more concerned with medical decision-making than with getting the bill paid.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM NORTH CAROLINA

”

“

**Become representative payee for the resident.**

LEGAL SERVICES ATTORNEY FROM VIRGINIA

”

“

**File an action in probate to have elder conserved.**

LEGAL SERVICES ATTORNEY FROM CONNECTICUT

”

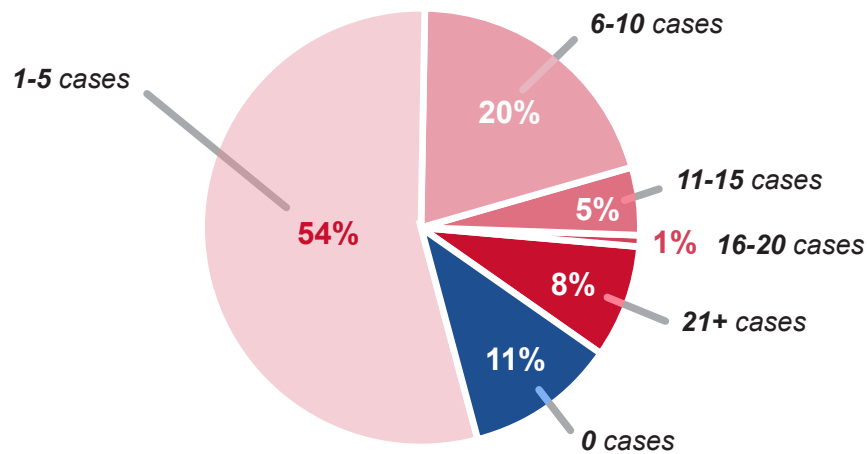
### *8. Prevalence of Collection Actions Against Third Parties*

The NCLC survey asked respondents:

**Approximately how many cases have you seen where nursing homes (or debt collectors acting on their behalf) attempted to collect from a third party?**

We received 79 responses to this question. A few respondents (11%) indicated that they have not seen any cases where nursing homes attempted to collect from a third party. The majority (54%) indicated that they had seen one to five cases, 20% had seen six to 10, 5% reported 11 to 15 cases, 1% had seen 16 to 20, and 8% reported 21 or more cases.

**Chart 5: Number of cases where respondent has seen nursing home attempt to collect from a third party (n=79)**



*\*Total is greater than 100 because of rounding.*

Some narrative responses from respondents providing more details on their answers are below.

“

**If you include assisted living, it would be much higher.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM NEW JERSEY

”

“

**Assuming "attempting to collect" means more than just a phone call to a third party. Calls to third parties are generally trying to collect from the nursing home resident.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM MICHIGAN

”



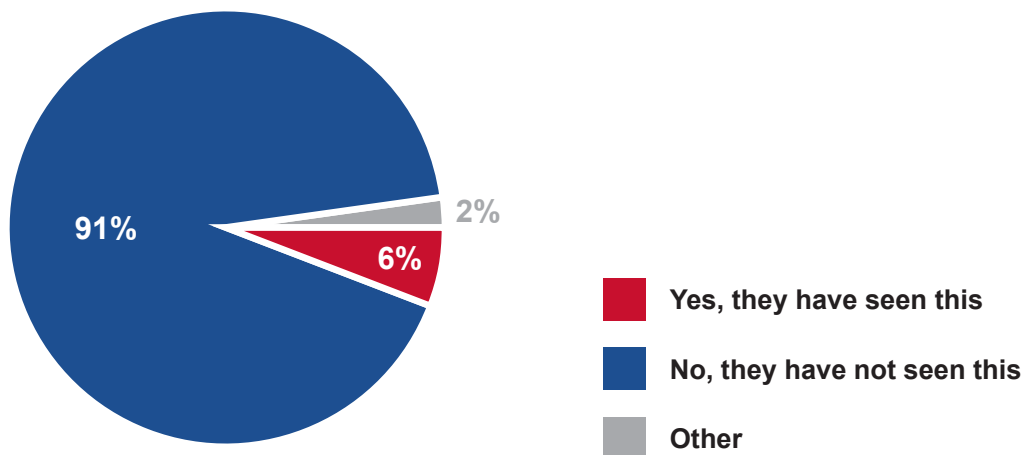
## 9. Nursing Home Debt Collection Against Third Parties and Bankruptcy

The NCLC survey asked respondents:

**Have you ever seen a third party attempt to discharge nursing home debt in bankruptcy?**

We received 77 responses to this question. A few respondents (6%) reported that they had seen a third party attempt to discharge nursing home debt in bankruptcy. The overwhelming majority (91%) said that they have not seen this, and 2% responded “other.”

**Chart 6: Number of respondents that have seen third parties attempt to discharge nursing home debt in bankruptcy (n=77)**



## *10. Which Parties Are Sued Nursing Home Debt Collection Lawsuits Against Third Parties*

The NCLC survey asked respondents:

**When you have seen lawsuits against third parties to collect a resident's nursing home debt, which third parties have been sued?**

Respondents were given 15 options and were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 77 responses to this question. The majority of respondents (56%) reported seeing lawsuits filed against the residents' children to collect nursing home debt, and nearly half of respondents (49%) saw lawsuits against the residents' spouses. One-quarter of respondents (25%) said that they have not seen any lawsuits against third parties to collect nursing home debts. More than one-fifth of respondents (23%) reported seeing lawsuits filed against the residents' agents under power of attorney. Some respondents saw lawsuits filed against the residents' guardians (12%), siblings (9%), friends (8%), other family members (5%), healthcare proxies (5%), grandchildren (4%), nieces/nephews (3%), parents (1%), and trustees (1%) to collect nursing home debt. Some respondents (8%) also reported that they saw lawsuits against third parties to collect nursing home debts but were not sure what that person's relationship was to the nursing home resident. One percent of the respondents answered "other."

**Table 5: Percent of respondents who have reviewed specific third parties sued in nursing home debt-collection lawsuits (n=77)**

Third Party Sued	Percent*
Resident's children	56%
Resident's spouse	49%
I haven't seen any lawsuits against third parties to collect nursing home debts	25%
Resident's agent under Power of Attorney	23%
Resident's guardian	12%
Resident's siblings	9%
Resident's friends	8%
Not sure - I have seen lawsuits against third parties to collect nursing home debts, but I'm not sure what their relationship was to the resident	8%
Resident's other family members	5%
Resident's healthcare proxy	5%
Resident's grandchildren	4%
Resident's nieces/nephews	3%
Resident's parents	1%
Resident's trustee	1%
Other	1%

*\*Total is greater than 100 because respondents could select multiple responses.*

One respondent from North Carolina provided information in the narrative comments suggesting that the cases they have seen filed against third parties were not to hold them personally liable for the debt but were brought to enforce the party's fiduciary duty to the resident. Another respondent from Michigan also shared they have seen these cases when the resident's "kids took money the nursing home was entitled to receive."

## 11. Common Claims Raised in Nursing Home Collection Lawsuits

The NCLC survey asked respondents:

**What claims have you seen in lawsuits to collect nursing home debts from third parties?**

Respondents were given 12 options and were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 74 responses to this question. The majority of respondents (55%) reported seeing breach of contract claims filed against third parties who were sued to collect resident nursing home debts. More than one-third (35%) saw unjust enrichment claims, and 30% reported fraudulent conveyance claims. More than a quarter of respondents (27%) reported lawsuits raising the doctrine of necessities, 27% reported claims based on quantum meruit (service rendered), and 20% saw account-stated claims. More than a fifth of respondents (23%) had not seen any lawsuits against third parties. One in seven said that they had seen lawsuits against third parties to collect nursing home debts but were unsure what claims had been filed. Some respondents reported claims for conversion (theft) (12%), a claim to compel an accounting (11%), and claims for filial support (8%). One percent of the respondents answered “other.”

**BY SIGNING BELOW, THE PERSONAL GUARANTOR IS AGREEING TO VOLUNTARILY PERSONALLY GUARANTEE PAYMENT TO FACILITY, BE JOINTLY AND SEVERALLY LIABLE FOR ALL SERVICES AND SUPPLIES RECEIVED BY THE PATIENT, AND TO MAKE ALL PAYMENTS WHEN THEY COME DUE. THE PERSONAL GUARANTOR UNDERSTANDS THAT HE OR SHE IS NOT REQUIRED BY LAW OR FACILITY TO PERSONALLY GUARANTEE PAYMENT. THE PERSONAL GUARANTOR AGREES THAT THIS GUARANTEE WILL CONTINUE UNTIL ALL FINANCIAL OBLIGATIONS TO FACILITY HAVE BEEN PAID IN FULL.**

EXCERPT FROM ADMISSION AGREEMENT OF ALTERCARE  
TRANSITIONAL CARE OF THE WESTERN RESERVE<sup>56</sup>

**Table 6: Percent of respondents who have seen type of claim brought in lawsuits against third parties to collect nursing home debt (n=74)**

Legal Claims	Percent*
Breach of contract	55%
Unjust enrichment	35%
Fraudulent conveyance	30%
Doctrine of necessities	27%
Quantum meruit (services rendered)	27%
I haven't seen any lawsuits against third parties to collect nursing home debts	23%
Account stated	20%
Not sure - I have seen lawsuits against third parties to collect nursing home debts, but I'm not sure what the claims were	14%
Conversion (theft)	12%
Compel an accounting	11%
Filial support	8%
Other claims	1%

\*Total is greater than 100 because respondents could select multiple responses.

Some respondents provided additional clarification in the narrative responses below.



**Breach of fiduciary duty in the case of POAs.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM ALABAMA



“

**I have seen one nursing facility allege fraudulent conveyance against a spouse. But that very same conveyance had already caused a Medicaid asset transfer penalty - because, from my deep experience with NC's Medicaid eligibility rules, it clearly violated those rules.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM NORTH CAROLINA

”

## *12. Outcomes of Nursing Home Debt Collection Lawsuits Against Third Parties*

The NCLC survey asked respondents:

**What outcomes have you seen in lawsuits against third parties to collect resident nursing home debts?**

Respondents were given 12 options and were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 76 responses to this question. Nearly two-fifths of respondents (38%) reported seeing lawsuits against third parties to recover nursing home debt resolved with a negotiated settlement. More than a quarter (26%) reported that they had seen cases voluntarily dismissed. More than one-fifth of respondents (21%) reported seeing cases where default judgment was entered against a third party. Slightly fewer (18%) said that they had seen lawsuits against third parties to collect nursing home debts but were not sure what the outcomes were. Some respondents reported summary judgment for the nursing home (11%), confession of judgment (9%), case dismissed on motion (9%), summary judgment for the third party (7%), judgment for nursing home after trial (3%), and judgment for the third party after trial (3%). Four percent of the respondents answered “other.” Almost a quarter (24%) had not seen any lawsuits against third parties to collect nursing home debts.

**Table 7: Percent of respondents who have seen each outcome in nursing home debt-collection lawsuits against third parties (n=76)**

Outcomes of Lawsuits	Percent*
Negotiated settlement	38%
Case voluntarily dismissed	26%
I haven't seen any lawsuits against third parties to collect nursing home debts	24%
Default judgment against third party	21%
Not sure - I have seen lawsuits against third parties to collect nursing home debts, but I'm not sure what the outcomes were	18%
Summary judgment for nursing home	11%
Confession of judgment	9%
Case dismissed on motion	9%
Summary judgment for third party	7%
Other	4%
Judgment for nursing home after trial	3%
Judgment for third party after trial	3%

*\*Total is greater than 100 because respondents could select multiple responses.*

Some of the narrative comments from respondents expanded on the outcomes they have seen in these cases, as outlined below.

“  
**I have a case still pending. Our motion to dismiss was denied.**  
 LEGAL SERVICES ATTORNEY FROM NEW YORK  
 ”



“

**In Philadelphia, it's hard to get dispositions in these cases and almost impossible to get a trial court level opinion in one. I have resolved all of the nursing home cases I've handled (in Municipal Court and Common Pleas Court) through settlements (usually a mutual walk away agreement) or by getting the Plaintiff to voluntarily discontinue.**

LEGAL SERVICES ATTORNEY IN PENNSYLVANIA

”

“

**Nursing home now owns 1/2 of daughter's home and has tried to force the sale of the home.**

LEGAL SERVICES ATTORNEY FROM ALABAMA

”

“

**I have settled most cases for zero payment, but I have two cases where the client (family member/spouse) agreed to pay a small fraction of the amount claimed.**

LEGAL SERVICES ATTORNEY FROM ILLINOIS

”

“

**I have seen a Confession of Judgment against the nursing home patient himself - the nursing facility did this in order to move its eventual post-death claim ahead of that of Medicaid Estate Recovery so that the nursing home might recover a portion of the overall unpaid balance.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM NORTH CAROLINA

”

“

**I have seen nursing homes place breach of contract cases against the resident in district court and obtain a default judgment.**

LEGAL SERVICES ATTORNEY FROM OKLAHOMA

”

“

**Usually default judgment.**

PRIVATE ELDER LAW FIRM ATTORNEY FROM NEBRASKA

”

### *13. Law Firms Bringing Nursing Home Debt Collection Lawsuits*

The NCLC survey asked respondents:

**Please list the names of any law firms that you have seen file collection lawsuits against third parties to collect nursing home debts.**

NCLC collected the names of 29 law firms reportedly filing nursing home debt collection actions across the country, specifically in Alabama (1), Indiana (2), Michigan (2), New Jersey (2), New York (15), Ohio (3), and Pennsylvania (4). Some respondents reported that they have seen these cases but could not remember the law firm that brought the actions. The types of firms reportedly bringing these cases range from smaller offices and solo practitioners to big law firms with multiple offices. These responses are on file with NCLC.

### *14. Types of Nursing Homes Bringing Nursing Home Debt Collection Lawsuits Against Third Parties*

The NCLC survey asked respondents:

**What types of nursing homes have you seen file lawsuits against third parties to collect nursing home debts?**

Respondents were given six options and were allowed to choose more than one option, so the percentages below total greater than 100%.

We received 77 responses to this question. Nearly half (48%) said that they had seen private, for-profit nursing homes file lawsuits against third parties to collect nursing home debts. More than a quarter (27%) had seen nursing homes file lawsuits against third parties to collect nursing home debts but were not sure what type of nursing home was involved. Some respondents saw private non-profit nursing homes (18%) and public nursing homes (14%) file lawsuits against third parties to collect nursing home debts. Nearly a quarter (23%) had not seen any lawsuits against third parties to collect nursing home debts. One percent of the respondents answered “other.”

**Table 8: Types of nursing homes filing debt-collection lawsuits against third parties (n=77)**

Type of Nursing Home	Percent*
Private for-profit nursing homes	48%
Not sure - I have seen lawsuits against third parties to collect nursing home debts, but I'm not sure what type of nursing home	27%
I haven't seen any lawsuits against third parties to collect nursing home debts	23%
Private non-profit nursing homes	18%
Public nursing homes	14%
Other	1%

*\*Total is greater than 100 because respondents could select multiple responses.*

One respondent from Washington also reported seeing private for-profit memory care facilities bringing these types of lawsuits.

### III. POLICY RECOMMENDATIONS

Survey results show that nursing home debt collection actions against third parties represent a significant financial and emotional strain on residents' family and friends. To protect them from predatory and abusive collection practices and to enforce the NHRA's existing protections, NCLC and Justice in Aging recommend that federal and state legislators and courts take the actions outlined below.

1. **Congress** should amend the NHRA to explicitly prohibit nursing homes from using admission agreements that impose financial liability on nursing home residents' families and friends. This prohibition would include financial guarantees and other various provisions that are currently used by facilities in an attempt to evade the "no guarantee" law, such as "responsible party" clauses and provisions that impose duties on a resident's family member, friend, or other caregiver personally.
2. **State legislators** should repeal state doctrine of necessities and filial support laws that impose personal liability for a resident's nursing home debt on their spouse or children.
3. **State courts** should adopt enhanced pleading and evidence rules before allowing default judgments.
4. **State courts** should train judges and clerks on identifying illegal nursing home debt collection actions and implement systems to better track and analyze how nursing home collection actions are filed and prosecuted in state courts.
5. **Federal and state enforcement agencies**, such as the CFPB, State Attorney General Offices, and CMS, should pursue enforcement actions against nursing homes, debt buyers, and debt collectors that engage in unlawful or abusive collection practices and nursing home admission practices. They also should educate consumers – including materials on CMS's Care Compare website – so that residents, family members, and friends are more aware of potential problems and how to address them.

### IV. CONCLUSION

Despite the federal prohibition, nursing homes improperly attempt to impose personal financial liability upon third-party representatives, including family and friends, for residents' unpaid bills. Nursing homes' aggressive debt collection practices violate federal and state law and lead to serious financial consequences for residents, their families, and friends. Federal and state officials should address the current problems by implementing some or all of the above recommendations and taking steps to enforce existing law.

## ENDNOTES

1. 42 U.S.C. § 1396r(c)(5)(A)(ii); 42 U.S.C. § 1395i-3(c)(5)(A)(ii).
2. CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sep. 2022); Anna Anderson, Eric Carlson, National Consumer Law Center, Justice in Aging, [FAQs: Can a Nursing Home Force a Resident's Family and Friends to Pay the Bill?](#) (Sep. 27, 2023).
3. Noam N. Levy, [Nursing Homes Are Suing the Friends and Family of Residents to Collect Debts](#), KFF Health News (July 28, 2022).
4. CFPB, [CFPB Field Hearing with Director Chopra on Nursing Home Debt Collection Practices](#) (Sep. 8, 2022); CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sep. 2022).
5. CMS & CFPB [Joint Letter to Nursing Facilities and Debt Collectors](#) (Sep. 8, 2022).
6. AARP and National Alliance for Caregiving, [Caregiving in the U.S.](#) (May 2020).
7. CDC, National Center for Health Statistics, [Nursing Home Care FactSheets](#), (updated Nov. 5, 2023); Kaiser Family Foundation (KFF), KFF analysis of CMS Care Compare data, [Total Number of Residents in Certified Nursing Facilities](#), accessed on Sept. 6, 2024.
8. CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sept. 2022).
9. Priya Chidambaram & Alice Burns, KFF, [A Look at Nursing Facility Characteristics Between 2015 and 2023](#), Fig. 5 (Jan. 5, 2024).
10. 42 C.F.R. § 483.10(g)(18).
11. Nina Bernstein, [To Collect Debts, Nursing Homes Are Seizing Control Over Patients](#), N.Y. Times (Jan. 25, 2015); CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sept. 2022).
12. Noam N. Levy, [Nursing Homes Are Suing the Friends and Family of Residents to Collect Debts](#), KFF Health News (July 28, 2022).
13. *Id.*
14. Institute of Medicine, *Improving the Quality of Care in Nursing Homes* (1986).
15. 42 U.S.C. § 1396r(c)(5)(A)(ii); 42 U.S.C. § 1395i-3(c)(5)(A)(ii).
16. 42 U.S.C. § 1396r(c)(5)(B)(ii); 42 U.S.C. § 1395i-3(c)(5)(B)(i); 42 C.F.R. § 483.15(a)(3).
17. Jason J. Perez Benavides, [Read It Three Times, Then Read It Again: How Nursing Homes Use "Responsible Party" Clauses in Admission Agreements to Charge Relatives for Their Loved Ones' Care](#), 49 Am. Soc'y of L. Med. & Ethics 4, 511-524 (April 2024).
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sept. 2022); Jason J. Perez Benavides, [Read It Three Times, Then Read It Again: How Nursing Homes Use "Responsible Party" Clauses in Admission Agreements to Charge Relatives for Their Loved Ones' Care](#), 49 Am. Soc'y of L. Med. & Ethics 4, 511-524 (April 2024).

24. CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sept. 2022).
25. CFPB, [Debt Collectors That Take Advantage of Surviving spouses and Their Vulnerabilities](#) (Sept. 20, 2024).
26. Nat'l Consumer Law Ctr., Collection Actions § 9.7 (6th ed. 2024), updated at [www.nclc.org/library](http://www.nclc.org/library); CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sept. 2022); CFPB, [Debt Collectors That Take Advantage of Surviving spouses and Their Vulnerabilities](#) (Sept. 20, 2024); Jennifer L. VanderVeen, *Elder Law: Advocacy for the Aging, Filial Responsibility* § 24:17 (3d. 2023) (Thomson Reuters); Katherine C. Pearson, [Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents](#), 20 ELDER L.J. 269 (June 8, 2012); see, e.g., *Presbyterian Med. Ctr. v. Budd*, 2003 PA Super 323, 832 A.2d 1066 (2003) (holding that the nursing home properly pled facts sufficient to sustain an action against resident's daughter for resident's debt based on filial responsibility).
27. Katherine C. Pearson, [Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents](#), 20 ELDER L.J. 269 (Jun. 8, 2012).
28. CFPB, [Debt Collectors That Take Advantage of Surviving spouses and Their Vulnerabilities](#) (Sept. 20, 2024) ("Two-thirds of new surviving spouses are women, and their average age is 71 years old.").
29. See generally Eric Carlson, Long-Term Care Advocacy § 3.06[2] (Lexis 2023).
30. See, e.g., *Inova Health Sys. Servs., Inc. v. Bainbridge*, 81 Va. Cir. 39 (2010) ("Although it may seem unusual that Congress would allow a nursing home to require an individual to sign an admission agreement but not give the nursing home recourse if that individual failed to make payments, it is not for this Court to create such a remedy."); *Vill. at the Greene v. Smith*, 2020 WL 4723348 (Ohio Ct. App. Aug. 13, 2020); *Manor of Lake City, Inc. v. Hinners*, 548 N.W.2d 573 (Iowa 1996).
31. *Walton v. Mariner Health of Maryland, Inc.*, 391 Md. 643, 894 A.2d 584 (2006); *Vill. at the Greene v. Smith*, 2020 WL 4723348 (Ohio Ct. App.); *Nat'l Church Residences First Cmty. Vill. v. Kessler*, 2023-Ohio-1437, 213 N.E.3d 829.
32. *Sunshine Care Corp. v. Warrick*, 100 A.D.3d 981, 957 N.Y.S.2d 122 (2012); *Wedgewood Care Ctr., Inc. v. Kravitz*, 198 A.D.3d 124, 154 N.Y.S.3d 312 (2021); *Troy Nursing & Rehab. Ctr., LLC v. Naylor*, 94 A.D.3d 1353, 944 N.Y.S.2d 323 (2012); *Nassau Operating Co., LLC v. DeSimone*, 206 A.D.3d 920, 171 N.Y.S.3d 528 (2022) (holding that a contractual provision which requires third party to "be held personally responsible and liable if his/her actions or omissions have caused and/or contributed to non-payment of the [plaintiff's] fees," is consistent with the ban on third party guarantees); *Saybrook Convalescent Hosp., Inc. v. Klevecz*, No. CV044001606, 2006 WL 3008454 (Conn. Super. Ct. Oct. 12, 2006) ("[I]t was the failure to use the funds for the purpose designated in the agreement that resulted in a breach of contract, rather than personal liability for the payment of the resident's debt to the nursing home."); *Whitney Manor Convalescent Ctr., Inc. v. Lumpkin*, No. CV065006153, 2010 WL 1904924 (Conn. Super. Ct. Apr. 8, 2010).
33. CFPB, [Issue Spotlight: Nursing Home Debt Collection](#) (Sept. 2022).
34. *Id.*
35. *Id.*

36. AARP, [Caregiving Out-of-pocket Costs](#) (2021).
37. *Id.*
38. *Id.*
39. *Id.*
40. Bill Lueders, [‘I Want to Go Home’](#), The Progressive Magazine (Jan. 28, 2022); Eric Carlson, [When Nursing Home Care is Denied](#), 41 Bifocal 243, no. 4, (2020).
41. Katie Engelhart, [Some Nursing Homes Are Illegally Evicting Elderly and Disabled Residents Who Can’t Afford To Pay](#), NBC News (Nov. 29, 2019).
42. *Id.*
43. U.S. Dep’t of Health and Hum. Servs., OEI-01-18-00250, [Facility-Initiated Discharges in Nursing Homes Require Further Attention](#) (Nov. 2021).
44. In a random, anonymized sample of 700 guardianship cases filed in Manhattan over a decade, Hunter College researchers found more than 12 percent were brought by nursing homes; see Nina Bernstein, [To Collect Debts, Nursing Homes Are Seizing Control Over Patients](#), N.Y. Times (Jan. 25, 2015).
45. Nina Bernstein, [To Collect Debts, Nursing Homes Are Seizing Control Over Patients](#), N.Y. Times (Jan. 25, 2015).
46. Anna Werner, CBS Morning News, [Nursing Homes are Suing Friends and Family to Collect on Patients’ Bills](#) (Aug. 11, 2022).
47. *Id.*
48. [Economic Impact of the Growing Burden of Medical Debt. Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs. Written Testimony of Robyn King](#), 117th Cong. 1-2 (Mar. 29, 2022).
49. *Id.*
50. CFPB, [CFPB Field Hearing with Director Chopra on Nursing Home Debt Collection Practices](#) (Sep. 8, 2022).
51. *Id.*
52. We abbreviate this as legal services attorney for the remainder of the report.
53. <https://www.nclc.org/nursing-home-debt-appendix/>
54. *Id.*
55. *Id.*
56. *Id.*



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