

## California Advocates for Nursing Home Reform

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Buyer beware! An admission agreement is a legal contract that states the responsibilities of the nursing home and the resident. Before signing an agreement, read and study it carefully.

Although California and federal laws regulate nursing home admission agreements, the contracts are written by the nursing home and seek to protect its interests. Studies of admission agreements have found that many contain misleading and illegal provisions. Never sign an agreement you do not understand. You have the right to take a copy of the agreement home to study, to ask questions about its terms and, if necessary, to seek changes.

### **Before Signing an Admission Agreement, Take These Steps:**

- Read the agreement and all documents to which it refers, such as a listing of charges, information on resident rights, and consent agreements.
- Develop a list of all your questions about what is contained in the agreement.
- Make sure that all your questions are answered to your satisfaction before signing.
- Use the agreement as an opportunity to clarify expectations and to negotiate care needs and costs.
- Consider having the document reviewed by an attorney or consumer advocate.

### **California Puts Admission Agreement Reform on Hold**

In 1997, California's legislature passed SB 1061, a law requiring nursing homes to use a standard admission agreement to be developed by the California Department of Health Services.

## **Nursing Home Admission Agreements**

Unfortunately, despite a long overdue deadline of January 2000, the Department of Health Services has not adopted a model admission agreement. In the meantime, other California requirements and federal laws protect residents and their families from unfair admission practices. These protections are described below.

### **Basic Requirements**

Each nursing home must make complete copies of its admission agreement immediately available to the public at cost, upon request. An admission agreement must be written in clear language, using words with common and everyday meanings. It must be printed in black type (at least 10-point type size) on just one side of plain white paper.

Every admission agreement must clearly state whether the facility participates in the Medi-Cal program. If a nursing home has filed a notice of intent to withdraw from the Medi-Cal program, the agreement must state that it is no longer accepting Medi-Cal from newly admitted residents.

### **Notification of Rights**

At or before admission, the nursing home must inform you about resident rights both orally and in writing in a language that you understand. The written description of rights must be comprehensive and be presented in at least 12-point type. The admission agreement must contain a separate written acknowledgement that you have been informed of the Patient's Bill of Rights.

Read the description of resident rights carefully and compare it with the information in the admission agreement. Some admission agreements have terms that contradict your rights. Ask about any discrepancies you identify.

## Requirements to Pay Privately

It is illegal for a Medicare or Medi-Cal certified nursing home to require a resident to pay privately for any set period of time. Applicants cannot be required to give assurances that they are not eligible for Medi-Cal or Medicare nursing home benefits or that they will not seek those benefits in the future. When residents qualify for Medi-Cal or Medicare nursing home coverage, nursing homes certified by these programs must accept their payments.

Some nursing homes require applicants to disclose financial information that is used to project how long they can pay privately before qualifying for Medi-Cal. Applicants with more money are usually given preference. Although this practice is of questionable legality, federal and California authorities allow it.

## Responsibility for Payment

The resident is the only person whose funds must be used to pay a nursing home. However, many nursing homes try to get other persons to accept personal financial responsibility by signing the admission agreement as a responsible party. This practice is illegal.

To avoid this problem:

1. Do not sign as a “responsible party,” “guarantor,” “financial agent” or any other term that the admission agreement states is a person who personally guarantees payment of nursing home fees.
2. If you manage a Medi-Cal beneficiary’s finances, cross out improper terms and replace them with “agent” (not “financial agent”).
3. If you are the resident’s legal representative, such as a conservator, cross out improper terms and replace them with your legal role.

Agents and legal representatives are responsible to use the resident’s funds, not their own money, to pay lawful charges.

If a nursing home attempts to collect money from you because you signed the admission agreement as a responsible party, seek advice from a qualified attorney. No matter what the agreement says, you may not be responsible for payment.

## Deposits

A nursing home cannot require or accept a deposit if Medi-Cal or Medicare is helping to pay for a person’s nursing home stay. Nursing homes may require a deposit from private-paying residents. Deposits paid by private-paying residents must be returned when Medi-Cal or Medicare starts paying for their nursing home care.

## Notice About Medi-Cal Eligibility

Prior to admission, Medi-Cal certified nursing homes must notify you about Medi-Cal eligibility standards, using a State mandated notice. The legislature required this notice after learning that some nursing homes misinformed applicants and residents about Medi-Cal eligibility. The notice contains important information, including:

- You do not have to use all your resources to qualify;
- Your home is an exempt resource. Its value does not affect your eligibility, and you have the right to transfer the home;
- Medi-Cal has special rules for married couples that protect resources and income for the spouse who is not in the nursing home.

## Notification of Charges

An admission agreement must describe services available in the facility and any related charges. This includes any charges for services not covered by the facility’s basic rate or not covered by the Medicare or Medi-Cal programs. Medicare and Medi-Cal certified nursing homes must state that optional and covered services may be different for residents in those programs than for private-paying residents. Medi-Cal certified facilities must give Medi-Cal beneficiaries a list of Medi-Cal optional and covered services.

## Rate Changes

If a nursing home plans to increase the daily room rate or fees for optional services, it must give residents 30 days written notice of the changes.

## Discharge Notification & Refunds

A resident can leave a nursing home without giving advance notice. An admission agreement cannot require advance notice of voluntary discharge.

You cannot be charged for any days of care after discharge unless you voluntarily leave the facility within 3 days of admission and Medicare and Medi-Cal are not paying for your nursing home care. In this situation, you may be charged for a maximum of three days at the basic daily rate. You are otherwise entitled to a refund of any advance payments made to the nursing home.

If a resident is discharged or dies, any advance payments must be returned to the heir or personal representative of the resident within two weeks after discharge or death.

## Binding Arbitration Agreements

To prevent residents from being able to sue for abuse or neglect, many nursing homes are asking new and current residents to sign admission agreements that include binding arbitration provisions. **It is not wise to sign such an agreement.**

By signing a binding arbitration agreement, you give up your constitutional right to go to court if a dispute arises in the facility, even if it involves abuse and neglect. There is no right to appeal a decision made through binding arbitration. An arbitration agreement should be signed voluntarily and without coercion only after you have had an opportunity to seek and consider legal advice about how to handle a dispute.

Nursing homes cannot require you to sign an arbitration agreement. Any arbitration clause must be on a form separate from the admission agreement and require separate signatures for approval.

## Consent to Treatment

A nursing home cannot legally require you to sign an agreement consenting to any treatments it or its physicians may recommend. Admission agreements may only require consent for routine nursing care or emergency care. Even if you sign a consent agreement for routine nursing care at admission, you always have the right to refuse any type of care at any time for any reason.

## Advance Directives

Advance directive is the general term used to describe instructions regarding preferences for future medical treatment. At admission, the nursing home must give you written information about advance directives explaining: (1) your right to direct your own health care decisions; (2) your right to accept or refuse medical treatment; (3) your right under California law to prepare an advance health care directive; and (4) the facility's policies that govern the use of advance directives.

Although it is a good idea to have an advance health care directive, facilities cannot require you to have or to make one. If you already have an advance health care directive, give a copy of it to the nursing home so it will know about your instructions.

## Confidentiality

The admission agreement must inform you of the right to confidential treatment of health information and provide you a voluntary means to authorize disclosure of information to persons of your choice.

## Personal Possessions

At admission, the nursing home must establish a personal property inventory and give the resident or personal representative a copy of it. Keep the inventory sheet current and maintain a copy.

## Waiver of Liability Statements

Some admission agreements claim that the nursing home cannot be held responsible if a resident is injured or a resident's property is lost, stolen or damaged. These waiver of liability statements are illegal and unenforceable.

## Notification of Grievance Procedures

An admission agreement must notify you that the nursing home's grievance policy is available. It must also inform you of the right to contact the California Department of Health Services or the long-term care ombudsman, or both, about grievances against the facility.

## How Can I Address Illegal Requirements?

- Seek legal advice from a qualified attorney or consumer advocate.
- Notify the nursing home of your concerns and negotiate changes. If you succeed, draw a line through the words to be changed and add words per your agreement. Place your initials next to the changes and ask the facility representative to do the same. Ask for a copy of the signed admission agreement.
- File a complaint with the Department of Health Services. Contact your ombudsman or CANHR for advice.

## Signing the Agreement

Prior to or at admission, nursing homes must ask the prospective resident to sign the admission agreement after informing him or her of its content. Except as noted below, no one else can be required to sign the agreement unless the prospective resident is legally incompetent or is medically incapacitated. If so, the prospective resident's legal representative can sign the agreement on his or her behalf.

The exception involves Medi-Cal beneficiaries. A person who manages or controls the funds and assets of a Medi-Cal beneficiary, called an agent, can be asked to sign or co-sign the admission agreement. However, the agent does not assume any personal financial responsibility by doing so, except with regard to paying the share of cost.

Please call CANHR if you have any questions or concerns about an admission agreement.

## BE SURE TO KEEP A SIGNED COPY OF THE ADMISSION AGREEMENT!

The most pertinent laws and regulations are found in:

**California Health & Safety Code:** Sections 1288(a), 1289.3–1289.5, 1418.7, 1439.8, 1599.60–1599.84, 1599.85–1599.89;

**California Welfare & Institutions Code:** Sections 14006.3, 14006.4, 14019.3, 14022.3, 14110.8, 14110.9, 14124.10, 14134.6;

**California Health Care Decisions Act,** AB 891, 1999;

**California Code of Civil Procedure:** Section 1295;

**Title 22 of the California Code of Regulations:** Sections 72520(b), 72527(a), 72528(g), 72529, 72531, 72543, 72545;

**United States Code:** Sections 42 USC 1396r(c)(1)(B), 42 USC 1396r(c)(2)(E) & (F); 42 USC 1396r(c)(4) & (5), 42 USC 1396r(e)(6); 42 USC 1395i-3(c)(5); 42 USC 1395cc(f)

**Code of Federal Regulations:** Sections 42 CFR 483.10, 483.12(c) & (d), 42 CFR 431.20, 42 CFR 489.102.

# Admission Agreement Checklist

## Items to be included in the contract:

- Services included in the daily rate
- Services that have an extra charge
- Source of payment, such as Medi-Cal or Medicare
- Cost to the resident
- Terms of the security deposit, if any
- Additional provisions agreed to by both parties

## At the signing, make sure you receive:

- A receipt for advance payment and/or security deposit, if any
- A receipt for money deposited in the resident's trust fund, if any
- The written facility policy concerning protection of resident trust funds and the right of residents to manage their own funds
- The statement of residents' rights
- The notice explaining Medi-Cal eligibility
- A written explanation of how to apply for and use Medicare and Medi-Cal benefits
- A list of available facility services and their costs
- If the resident is a Medi-Cal beneficiary, a list of Medi-Cal covered and optional services
- The facility's written policy on advance directives
- The facility's written policy on holding a bed when hospital care is needed
- The facility rules governing resident conduct
- A copy of the signed admission agreement and all attached forms – make sure that your copy includes all changes and that they have been initialed by you and the facility representative
- The facility's written theft and loss policies and procedures

## Make sure the nursing home has attached to the contract:

- A signed inventory of the resident's clothing and personal belongings
- A signed copy of any additional agreements you have made with the facility
- A copy of every other document you signed at admission