

Your Rights as a Nursing Home Resident



Elder
Law
Solutions

Margot G. Birke, Attorney at Law
3 Cherry Street, Suite 101B, Newburyport, MA
www.elderlaw-solutions.com
elderlawsolutions@gmail.com
978.465.5407

MEDICAL CARE

You have a right to...

- choose your own attending physician and pharmacy
- refuse treatment
- make your own decisions about medical care
- be informed in advance of changes in your care or treatment
- be free from physical or chemical restraints, except in emergencies
- restraints may be used only to ensure the physical safety of you or other residents and only after a physician's written order that tells why and for how long restraints may be used

The facility must...

- report an alleged violation involving your treatment to the appropriate officials
- investigate all alleged violations and report the results of the investigation

PERSONAL RIGHTS

You have a right to...

- privacy when meeting with your doctor, family, friends or resident groups
- send and receive mail that is unopened
- a private place to make and receive phone calls
- confidential personal and medical records
- see your personal and medical records within 24 hours upon request
- prevent release of your personal records without written permission from you or your authorized representative
- share the same room with your husband or wife if you both reside in same facility
- reasonable accommodation of your personal needs and preferences, including the right to plan your own daily activities, wear your own clothes, and keep and use your own furniture and belongings as space allows
- present grievances to staff, state officials or the ombudsperson without reprisal or discrimination

TRANSFER AND DISCHARGE

You may be transferred or discharged only...

- if necessary for the health or safety if you or other residents for nonpayment
- if you no longer require the services of the facility
- if the facility closed

You have a right to...

- receive 30 days advance written notice of any transfer or discharge, except in emergency situations
- receive 48 hours advance notice before a change of roommate
- appeal any transfer of discharge to a State agency
- receive advance notice of the facility's policy for holding a resident's bed before any transfer for hospitalization or therapeutic leave
- refuse to be transferred from a "Medicaid-certified bed" to a "non-Medicare certified bed" and vice versa
- have the nursing home hold your bed for up to 10 days if the length of hospitalization or leave is estimated to be 10 days or less and the right to the next available bed to it's a hospital stay lasts longer than 10 days

YOUR FUNDS

You have a right to...

- manage your own finances unless a guardian or conservator has been appointed for you, and the facility may not require you to deposit funds with the facility

The facility must...

- hold, safeguard and account for your personal funds if you give written authority
- deposit personal funds in excess of \$50 in a separate interest-bearing account and provide you with a complete accounting of all transactions involving your funds

ABUSE

You have the right to...

- be free from verbal, mental, physical or sexual abuse, corporal punishment or involuntary seclusion

The facility must...

- implement procedures that protect you from abuse, neglect, or mistreatment and misappropriation of your property

FACILITY POLICY

You have the right to...

- be informed both orally and in writing at the time of your admission of your rights during your stay at the facility
- be informed both orally and in writing at the time of your admission of the procedures for establishing MassHealth eligibility

The facility must...

- have the same policies and practices of transfer, discharge and provision of services for all residents, regardless of source of payment

The facility must not...

- treat people differently because MassHealth or Medicare pays for their care
- require you to have a guardian or to appoint a power of attorney as a condition of admission
- require a third party guarantee of payment or accept gifts as a condition for admission or further stay
- require you to waive your right to apply for or receive MassHealth or Medicare

The facility may...

- require individuals who have legal access to your income or resources to sign a contract (without themselves incurring personal liability) to provide payment from your income or resources

Just Say “NO” to Arbitration!

Frail nursing home residents and their frazzled family members are routinely asked to sign a stack of densely printed documents at the time of admission, without adequate time to review them or to consult with counsel, and without realizing that the agreements may include forced arbitration provisions. Arbitration requires residents to waive their fundamental constitutional right to a jury trial, even if they later suffer serious injury, medical malpractice, or wrongful death. Because arbitration is secret and there is no public record of the outcome, it keeps cases of malpractice, abuse and neglect out of the public eye, effectively denying residents and their families access to justice. A new federal rule from Centers for Medicare and Medicaid Services, effective September 16, 2019, provides that:

- Residents may not be required to agree to arbitration as a condition of admission to a nursing home.
- Residents may not be required to agree to arbitration as a condition of continued stay in a nursing home.
- Residents and their representatives have a 30-day right to rescind the arbitration agreement.
- Nursing homes must explicitly inform residents or their representatives of the right not to sign an arbitration agreement as a condition of admission to, or right to remain in, the facility.
- The arbitration agreement itself must explicitly state that the agreement is not a condition of admission to, or right to remain in, the facility.
- Facilities must ensure that the agreement is explained to residents and their representatives in a “form and manner” that they understand, including in a language they understand.

Although the new rule does not impose an outright ban on arbitration agreements in nursing homes, it does affirm the right of residents to “just say no” to arbitration clauses in admission agreements. Elder advocates should seize this opportunity to educate residents, their families and representatives, and the public about these critical rights.

Many of the rights listed above are further protected by the Massachusetts Consumer Protection Laws. Under consumer protection regulations, violations may subject the facility to liability for multiple damages and attorneys’ fees.

You may wish to report your concerns or problems as a nursing home resident to the Ombudsman Program at 617-727-7750.

If you have any questions or need a strong advocate for yourself or a loved one please call Attorney Margot G. Birke at 978-465-5407.

Attorney Margot G. Birke founded Elder Law Solutions to focus on the intricate legal and financial needs of older and disabled adults. She has extensive experience in Elder Law as an advocate, mediator, and volunteer. She speaks frequently at assisted living centers, geriatric centers, and councils on aging to empower the elder community by providing the information they need to make informed choices

Margot Birke is a member of the Massachusetts Chapter of the National Academy of Elder Law Attorneys, a member of the Massachusetts, New York, and American Bar Associations, the Newburyport Chamber of Commerce, and the Academy of Special Needs Planners. Margot also is the Past-Chairperson on the advisory Council on Elder Services of the Merrimack Valley and is currently state certified Nursing Home ombudsman.

Margot received her B.A. from Fordham College in New York and her J.D., with academic honors, from Fordham University Law School. She is admitted to practice in both Massachusetts and New York.

Elder Law Solutions

Margot G. Birke, Attorney at Law
3 Cherry Street, Suite 101B
Newburyport, MA 01950
978-465-5407

elderlawsolutions@gmail.com

www.elderlaw-solutions.com

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