



Nursing Home Admissions Agreements

Federal and state law provides that nursing home (rehabilitation facility) admission agreements and addendums¹:

- **Cannot require the resident waive his/her rights included under the federal regulations and other protections under state or local nursing home law.**
 - Nor can the agreement and addendums contradict federal or state laws/regulations.
- **Cannot require or request the resident waive his/her rights to Medicare or Medicaid.**
 - Example: the nursing home cannot request or require residents agree to not apply for Medicaid until the resident has first privately paid for a certain period of time.
- **Cannot require as a condition of admission (or continued residency) the resident enter into a binding arbitration agreement.**
 - Entering into an arbitration agreement means you waive your right to pursue legal action in the court system if you are harmed.

(See page 3 of this guide for additional details)

¹ Legal requirements pertaining to admissions agreement are found under federal regulation 42 CFR 483.15(a) and state regulation 10 NYCRR 415.3(b) and can be accessed at https://www.ecfr.gov/cgi-bin/text-idx?SID=3a66dbb4aa4356a3354ed88c245f2f45&node=se42.5.483_115&rgn=div8 ; and <https://regs.health.ny.gov/content/section-4153>

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- **Cannot waive (or request the resident waive) its liability for loss of resident personal property.**
 - The law requires nursing homes “exercise reasonable care for the protection of the resident’s property from loss or theft.”
 - Advocacy Tip: while what is “reasonable care” is debatable, it should take into account a resident’s dementia or other factors that may limit the resident’s ability to look after his/her personal property.

(See page 4 of this guide for additional tips.)
- **Cannot include financial guarantees.**
 - Nursing homes cannot request a third party guarantee of payment. This means family or friends who co-sign the agreement cannot be financially responsible.
 - However, nursing homes may request and require a resident representative who has legal access to a resident’s funds and resources (i.e. Power of Attorney) pay for care out of the resident’s funds without being held financially liable.
 - Caution, while a Power of Attorney may not be directly financially liable to the nursing home under the admissions agreement, the Power of Attorney may be liable for failure to provide for payment from the resident’s funds where he/she breaches a fiduciary duty.
- **Cannot require residents deposit personal funds with the nursing home.**
 - Every resident (unless pursuant to a court order) has the right to manage his/her financial affairs.
 - While a nursing home cannot require residents deposit personal funds with the facility, a resident may choose to do so through written authorization.
 - Advocacy Tip: Typically found in addendums, nursing homes will request that the resident agree to allow the nursing home become his/her Representative Payee for Social Security. This means the resident will lose the ability to manage his/her Social Security payments. The nursing home cannot require a resident (or a resident representative) do this!



New Rule on Arbitration Agreements²

The Centers for Medicare & Medicaid Services (CMS) has finalized a new rule that prohibits nursing homes from requiring residents enter into pre-dispute arbitration agreements as a condition to admission.

Specifically the new rule states:

- **Arbitration agreements must not be used as a condition of admission** to a nursing home **or as a requirement for a resident to continue to receive care** at the facility;
- Nursing homes must explicitly inform the **resident** or resident representative it is his/her **right to not sign the agreement** (this language must also be in the agreement);
- The agreement must:
 - Explicitly **grant residents the right to rescind the agreement within 30 days** of signing it;
 - Provide for the selection of a neutral arbitrator agreed upon by both parties;
 - Provide for the selection of a venue that is convenient to both parties;
 - Not contain any language that prohibits or discourages the resident (or anyone else) from communicating with federal, state or local officials. This includes surveyors, and representatives of the Office of the State Long-Term Care Ombudsman.

² The new rule may be accessed at <https://www.federalregister.gov/documents/2019/07/18/2019-14945/medicare-and-medicaid-programs-revision-of-requirements-for-long-term-care-facilities-arbitration>



General Advocacy Tips

- Review admission agreement and addendums carefully.
 - Entering a nursing home, whether for short-term rehabilitation or long-term care is very stressful to the resident and representative. Review the agreement and addendums carefully. You have the right to cross out provisions you do not agree with or are otherwise improper.
 - If you have questions about anything, ask! The nursing home is required to explain the terms of its agreement and addendums.
- Delay signing the admissions agreement until after the resident is in the nursing home.
 - There is risk to doing this, as the facility may choose to refuse admission to the resident.
 - Delaying signing the agreement enables the resident to review the agreement carefully, dispute positions, and perhaps secure counsel to review the paperwork.
 - Once in the nursing home, there are only 6 allowable reasons a nursing home may transfer/discharge a resident. Failure to sign the admissions agreement is not one of them.