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NOTES

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

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Abstract

This Note explores an alarming, decades-old trend that has received renewed attention from enforcement agencies and the media: nursing homes suing family members and friends ("relatives") for residents' unpaid bills. As justification, nursing homes point to "responsible party" clauses within admission agreements signed by relatives during the admission process. Undeterred by the 1987 Federal Nursing Home Reform Act's (FNHRA) prohibition on requiring relatives to act as financial guarantors in exchange for residents' admission, nursing homes use carefully worded "responsible party" clauses to obtain virtually the same result: relatives' total liability for residents' unpaid balances. Relatives are frequently caught off-guard by these lawsuits; many who sign admission agreements do so without a proper understanding of the potential liability they are assuming and have limited (if any) access to residents' assets. This problem is aggravated by several aspects of the admission process that disadvantage relatives, such as the stressful and emotional nature of admission, the complicated language in admission agreements, and the inadequate—at times, misleading—guidance provided by nursing homes. This Note examines the tension between the FNHRA's financial protections for relatives and nursing homes' admission practices and use of "responsible party" clauses. Furthermore, this Note proposes solutions aimed at better informing relatives of the legal risks associated with "responsible party" clauses.

Keywords: nursing home; Federal Nursing Home Reform Act; family debt; responsible party; admission agreement

I. Introduction

An unexpected bill is never a welcome surprise. The overlooked subscription or the occasional hidden fee is frustrating. These surprises do not present problems when they are for small amounts. But what if you opened your mail to see an unexpected bill for an amount you could not pay? What if the bill was from the nursing home you checked your family member or beloved friend into, the same nursing home that reassured you that everything you signed was "standard paperwork" and that there was "no need to worry"? Now you face a mountain of debt that you never intended to acquire. Months pass and the nursing home is not budging. It says you signed a contract, but you would remember putting yourself on the line for thousands of dollars, wouldn't you? And besides, wasn't your loved one on Medicaid anyway? Didn't they have assets to cover their debt? Many calls with the nursing home later—and eventually, with the collection agency—and they still will not budge, and you remain unable to pay off the debt. They say you signed a contract promising to make sure the nursing home got paid. One day, a civil complaint arrives in the mail: the nursing home is suing you for the unpaid amount. You can barely afford to support your own family and have struggled to put money aside for the nursing home bills; affording defense counsel will be impossible. What now? How did you get here?

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For adults in the United States who help a loved one gain admission to a nursing home, the above scenario is a reality they must prepare for. A 2022 report from Kaiser Health Network and National Public Radio (NPR) brought renewed attention to a long-time problem: nursing homes are suing residents' family and friends ("relatives") for payment of the residents' unpaid bills.[1] To justify collection, these nursing homes rely on vague contractual language known as "responsible party" clauses, which relatives unwittingly sign as part of the copious paperwork required to admit their loved one into a nursing home.[2] In many instances, these relatives cannot afford counsel, and default judgments are entered against them.[3]

This problem is not new. Decades ago, Congress addressed this problem with the passage of the 1987 Federal Nursing Home Reform Act (FNHRA).[4] The FNHRA prohibits nursing homes from *requiring*—though, as explained below, not from soliciting[5]—that a relative act as the resident's financial guarantor.[6] Nursing homes can nonetheless assign similar contractual liability to relatives by requiring other kinds of promises.[7] Then, nursing homes lean on those promises to sue the relative for breach of contract and hold them liable for the resident's unpaid bill—a largely permissible practice under the FNHRA.[8]

Since 1987, Congress has not passed new legislation addressing this problem. And even though the nursing home industry is one of the most regulated industries in the country,[9] the Centers for Medicare & Medicaid Services ("CMS") regulations on this topic are scarce and mostly repeat the language of the FNHRA.[10] That being the case, nursing home collection practices continue to leave relatives feeling caught off guard.[11]

This Note proceeds in six parts. Part II provides an explanation and brief history of the FNHRA's protections for relatives. Part III reviews the literature, argues that the problems recognized by those scholars persist today, and offers a new perspective on "responsible party" clauses and the FNHRA. Then, Part IV examines relevant caselaw and events from various jurisdictions. The cases are breach of contract suits brought by nursing homes against relatives who signed "responsible party" clauses; the primary dispute in each case is the clause's validity under the FNHRA. Outside the courthouse doors, nursing home collection practices have led to government enforcement action in at least one jurisdiction—Washington D.C. Part V proposes new solutions to the problems identified by this Note. Part VI concludes.

II. Nursing Home Billing Practices: A Primer and Recent Developments

Today, over 15,000 certified nursing homes in the United States serve approximately 1.4 million residents.[12] Medicaid is the primary payor source for sixty-two percent of those residents, Medicare

[1] *See* Noam M. Levey, *Nursing Homes Are Suing the Friends and Family of Residents to Collect Debts*, Kaiser Health News (July 28, 2022), https://khn.org/news/article/diagnosis-debt-nursing-home-lawsuits-third-party-debt-collection/ [https://perma.cc/38UJ-CRP2].

[2] *Id.*

[3] *Id.*

[4] *See generally* Pub. L. 100–203, Title IV, Subtitle C, §§ 4201 to 4218, Dec. 22, 1987, 101 Stat. 1330–160.

[5] *See* Podolsky v. First Healthcare Corp., 50 Cal.App.4th 632, 646 (Cal. App. 2 Dist. 1996).

[6] 42 U.S.C.A. § 1395i-3(c)(5)(A)(ii) (West 2021); 42 U.S.C.A. § 1396r(c)(5)(A)(ii) (West 2021).

[7] *See* Part IV, *infra* (describing types of contractual promises used by nursing homes in admission agreements to hold relatives independently liable for resident's unpaid bills); *e.g.*, Meadowbrook Ctr., Inc. v. Buchman, 90 A.3d 219, 238, 240 (Conn. App. 2014) (holding that defendant could be held personally liable under "responsible party" clause for failure to file Medicaid application on his mother's behalf).

[8] *See, e.g.*, *Buchman*, 90 A.3d at 223-25, 238, 240-41.

[9] Nursing Home Law Center LLC, *Who Regulates Nursing Homes?* (last visited Apr. 10, 2023), https://www.nursinghomelawcenter.org/who-regulates-nursing-homes.html [https://perma.cc/6KJW-3PQK].

[10] *See* 42 C.F.R. § 483.15 (2021).

[11] *See* Levey, *supra* note 1; *Economic Impact of the Growing Burden of Medical Debt: Hearing Before the Comm. On Banking, Housing, and Urban Affairs,* 117th Cong. (2022) (statement of Robyn King, Client, Legal Aid Society of Cleveland) (relative was "shocked" to learn she was "suddenly on the hook for paying a huge bill" of over $70,000) [hereinafter "Statement of Robyn King"].

[12] *Nursing Homes,* Off. of Inspector Gen., Dep't of Health & Human Servs., (Mar. 31, 2023), https://oig.hhs.gov/reports-and-publications/featured-topics/nursing-homes/ [https://perma.cc/2KUH-7MKT].

for thirteen percent, and other payment sources (e.g., private insurance, out-of-pocket) for the remaining twenty-five percent.[13] Essentially, the nursing home industry is propped up by Medicare and Medicaid.

Medicare covers short-term non-custodial care, which is medically necessary care that must be provided by a nurse or doctor in a Skilled Nursing Facility, usually for those who are 65 or older.[14] Medicaid covers long-term nursing home care—including custodial care—so long as the resident meets their state's eligibility criteria, which are usually income-based and require the resident to be impoverished to some degree.[15] Custodial care is what most people picture when they think of standard nursing home care: assistance with daily living activities like eating, bathing, and dressing.[16]

All nursing homes that participate as providers in the Medicare or Medicaid programs must abide by the FNHRA.[17] The FNHRA aims to "improve the quality of care that poor elderly and disabled Medicaid [and Medicare] patients receive in nursing homes."[18] The law's passage was prompted, in part, by reports of poor quality of care and discrepancies in care between private-pay residents and those covered by Medicare and Medicaid.[19] Accordingly, Subsection (c)(4) of the FNHRA states that "[a] nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment."[20] More relevant to this Note, however, are Subsection (c)(5)(A)(ii)[21] (hereinafter "Subsection A") and Subsection (c)(5)(B)(ii)[22] (hereinafter "Subsection B"), both of which define the contours of the relative's liability.

Subsection A prohibits nursing homes from "requir[ing] a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility."[23] This "third party" usually is the relative who assists the resident during the admission process.[24] But Subsection B provides an important caveat: a nursing home may still "requir[e] an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a

[13]Priya Chidambaram, *A Look at Nursing Facility Characteristics Through July 2022*, KFF (Aug. 24, 2022), https://www.kff.org/medicaid/issue-brief/a-look-at-nursing-facility-characteristics-through-july-2022/ [https://perma.cc/SKK8-K9FX].

[14]Ctrs. for Medicare & Medicaid Servs., *Nursing Home Care*, https://www.medicare.gov/coverage/nursing-home-care [https://perma.cc/7AWH-XPYV] (last visited Apr. 15, 2023); Ctrs. for Medicare & Medicaid Servs., *Skilled Nursing Facility (SNF) Care*, https://www.medicare.gov/coverage/skilled-nursing-facility-snf-care [https://perma.cc/28QB-PVX4] (last visited Apr. 15, 2023); *see also* Ctrs. for Medicare & Medicaid Servs., Medicare Coverage of Skilled Nursing Facility Care 6, 14, https://www.medicare.gov/Pubs/pdf/10153-Medicare-Skilled-Nursing-Facility-Care.pdf [https://perma.cc/G3JB-3P6Y] (last visited Apr. 15, 2023).

[15]Ctrs. for Medicare & Medicaid Servs., *Institutional Long Term Care,* https://www.medicaid.gov/medicaid/long-term-services-supports/institutional-long-term-care/index.html [https://perma.cc/65UL-9QZB] (last visited Apr. 15, 2023); MacLean Holloway Doherty & Sheehan, P.C., *The Basic Rules of Nursing Home Medicaid Eligibility*, https://mhdpc.com/the-basic-rules-of-nursing-home-medicaid-eligibility/ [https://perma.cc/4ZQD-RTG8] (last visited Apr. 10, 2023).

[16]Ctrs. for Medicare & Medicaid Servs., Custodial Care vs. Skilled Care, https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/infograph-CustodialCarevsSkilledCare-%5BMarch-2016%5D.pdf [https://perma.cc/V8E4-8E5K] (last visited Apr. 10, 2023).

[17]42 U.S.C.A. § 1395i-3 (West) (applies to Medicare-certified skilled nursing facilities); 42 U.S.C.A. § 1396r (West) (applies to Medicaid-certified nursing facilities). These two laws are virtually identical. Unless otherwise stated, any mention of the FNHRA in this Note refers to both statutes and the corresponding sections therein.

[18]*Medicaid Issues in Family Welfare and Nursing Home Reform: Hearings on H.R. 2270 Before the Subcomm. on Health & the Env't*, 100th Cong. 93-94 (1987) (statement of Rep. Hen A. Waxman, Chairman, Subcomm. on Health & Env't).

[19]*See id.* (alluding to the poor quality of nursing home care in America and describing the need for legislative reform); Katherine C. Pearson, *Responsible Thing to Do About Responsible Party Provisions in Nursing Home Agreements: A Proposal for Change on Three Fronts*, 37 U. Mich. J.L. Reform 757, 760-61 (2004); *see also* Eric Carlson, *Illegal Guarantees in Nursing Homes: A Nursing Facility Cannot Force a Resident's Family Members and Friends to Become Financially Responsible for Nursing Facility Expenses*, 30 Clearinghouse Rev. 33, 34 (1996).

[20]42 U.S.C.A. § 1395i-3(c)(4) (West); 42 U.S.C.A. § 1396r(c)(4) (West).

[21]42 U.S.C.A. § 1395i-3(c)(5)(A)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(A)(ii) (West).

[22]42 U.S.C.A. § 1395i-3(c)(5)(B)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(B)(ii) (West).

[23]42 U.S.C.A. § 1395i-3(c)(5)(A)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(A)(ii) (West).

[24]*See* Levey, *supra* note 1 (describing several cases in multiple states where relatives helped admit their loved ones into a nursing home and fill out admission paperwork, only to later be sued by the nursing home for the resident's unpaid bills).

contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care."[25]

At first blush, the FNHRA seems straightforward: nursing homes cannot require a relative to act as the resident's financial guarantor in exchange for the resident's admission, but they can require a relative to use a resident's assets for payment if they have access to such assets. Yet, as described in Part IV, nursing homes use "responsible party" clauses and questionable admission protocols to circumvent the FNHRA and obtain personal financial liability for relatives, which allows nursing homes to sue for breach of contract and recover a resident's unpaid balance.[26] "Responsible party" clauses can span just a few sentences, buried in complicated multi-page admission agreements.[27] One such clause, part of an admission agreement for a nursing home in Rochester, New York, reads as follows:

> By entering into this agreement, the patient, the patient's spouse, and/or the patient's responsible party and undersigned agent(s) understand and agree to the patient's payment obligations. The patient agrees to pay for, or arrange to have paid for by Medicaid, Medicare, or other third party Insurers or payers, all services provided hereunder and agrees to pay any required third party deductibles, co-Insurance, or *monthly* income budgeted by the Medicaid program (called the "NAMI" amount). The undersigned accepts the duty to insure continuity of payment. This includes, but is not necessarily limited to, the duty to arrange for timely Medicaid coverage if Medicaid coverage becomes necessary.[28]

Facially, this clause comports with Subsection A: the "undersigned"—the relative—is not asked to act as a guarantor or to *directly* assume any personal financial obligations. Instead, the relative assumes the "duty to insure [sic] continuity of payment," which creates an independent ground for the relative's potential liability. Nursing homes point to this "duty" to blame the relative for the resident's missed payments, and that forms the basis of the nursing home's complaint against the relative.[29]

"Responsible party" clauses can also be misleading: relatives sometimes misinterpret the words "responsible party" as another way of saying "point of contact" (i.e., the person the nursing home should contact in an emergency).[30] Even when "responsible party" is clearly defined, the nursing home provides no adequate verbal explanation of the scope of this responsibility: administrative staff hand a stack of admission paperwork to the relative, offering little guidance beyond saying "sign here" and marking an "X" on the requisite pages.[31]

Relatives often sign these admission agreements under emotional and stressful circumstances, without the guidance of a lawyer or dedicated advocate. A typical nursing home admission experience has been described in the following way:

> Frequently, families begin the admission paperwork for a nursing home soon after a loved one has suffered from a life-threatening illness or injury. When an elderly family member is admitted to a

[25]42 U.S.C.A. § 1395i-3(c)(5)(B)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(B)(ii) (West).

[26]*See* Part IV Section 2, *infra* (discussing cases); Levey, *supra* note 1; *see also* Eric Carlson, *Twenty Common Nursing Home Problems and the Laws to Resolve Them*, 39 Clearinghouse Rev. 519, 525 (2006) (discussed *infra* notes 52-53 and accompanying text); Pearson, *supra* note 19, at 771-75.

[27]*See* Levey, *supra* note 1.

[28]*Id.* (scroll to "Trapped by Paperwork" section of article and click on hyperlink titled "making friends and relatives a 'responsible party' (p. 4)"); Cnty. of Monroe v. Lawson, No. 4:17-CV-2952 JCH (E.D. Mo. Jul. 12, 2018) Ex. 4 (available at https://www.documentcloud.org/documents/22121933-e2020010204_county_of_monroe_v_james_lawson_et_al_exhibit_s__4#document/p4/a2131991 [https://perma.cc/TS5W-FARA]).

[29]*See, e.g.*, Wedgewood Care Ctr., Inc. v. Kravitz, 154 N.Y.S.3d 312, 315-16 (N.Y. App. Div. 2d Dept. 2021); National Church Residences First Community Village v. Kessler, NO. 14-22-22, 2023 WL 3162188, at * 8-11 (Ohio App. 3 Dist., 2023).

[30]Carlson, *supra* note 26, at 525; Christina Lesher, Andrea Wilson & Kerrie Wesley, *Whose Bill Is It Anyway – Adult Children's Responsibility to Care for Parents*, 6 Est. Plan. & Cmty. Prop. L.J. 247, 260 (2014).

[31]*See* Levey, *supra* note 1; Lesher et al., *supra* note 30, at 259.

> hospital, oftentimes, the hospital will later discharge the individual to a nursing home for rehabilitative treatment, without much advance notice. During the discharge process, families have very little time to explore options and discuss the documents they are signing with nursing home staff. Additionally, they may believe that a third party guarantee is standard. Typically, during the admission process, the admission attendant will simply put an "X" in areas where signatures are needed. Rarely, if ever, is there time left to discuss any of this with an attorney because hospitals are often eager to discharge patients when those assuming responsibility may not understand the documents they signed.[32]

Though the FNHRA provides some basic rules for the nursing home admission process, it does not address the stressful realities described above.

CMS regulations also do not address these realities. The regulations essentially repeat the language of Subsection A and Subsection B.[33] CMS provides little to no guidance on how nursing homes should advise relatives on the admission agreement.[34] Nor do the regulations acknowledge the stressful nature of the admission process or provide guidance on how nursing homes can mitigate the related pressures and misunderstandings.[35] Such a bare-bones regulatory scheme leaves a wide opening for nursing homes to adopt practices that prompt relatives to unwittingly assume higher levels of risk and liability than they intended.

Recently, the Biden administration has scrutinized nursing home admission agreements and the unexpected debt that relatives can be left with. On September 8, 2022, the Department of Health & Human Services (HHS) and the Consumer Financial Protection Bureau (CFPB) issued a joint letter condemning nursing homes in the United States that skirt compliance with the FNHRA.[36] This letter reiterated that admission agreements violate the FNHRA if they require third parties to assume financial liability for a resident's nonpayment.[37] On the same day, the CFPB publicly advised nursing homes that collecting debts created under non-FNHRA-compliant contracts violates the Federal Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA).[38] Additionally, a joint press release from HHS Secretary Xavier Becerra and CMS Administrator Chiquita Brooks-LaSure characterized these debt collection practices as "harassment."[39] Recent developments therefore demonstrate the ongoing tension between nursing homes and the FNHRA. So, despite the existing literature discussed next, a new perspective is needed. This Note fills the gap.

III. Literature Review and Original Contributions

A relative's obligations to a nursing home start and end with the terms of the admission agreement. Two scholars' analyses of "responsible party" clauses and admission practices are discussed below.

Donna Myers Ambrogi has characterized admission agreements as *adhesion contracts* because they are written solely by the nursing home and because the bargaining power between the parties is greatly

[32]Lesher et al., *supra* note 30, at 259.

[33]*See* 42 C.F.R. § 483.15(a)(3) (2021).

[34]*See generally* 42 C.F.R. § 483 (2021).

[35]*See generally id.*

[36]Letter from the Ctrs. for Medicaid & Medicare Servs. and the Consumer Fin. Prot. Bureau to nursing homes and debt collectors (Sept. 8, 2022), https://files.consumerfinance.gov/f/documents/cfpb_nursing-home-debt-collection_joint-letter_2022-09.pdf [https://perma.cc/3RFS-63UN].

[37]*Id.*

[38]Consumer Fin. Prot. Bureau, *Consumer Financial Protection Circular 2022-05* (Sept. 8, 2022), https://www.consumerfinance.gov/compliance/circulars/circular-2022-05-debt-collection-and-consumer-reporting-practices-involving-invalid-nursing-home-debts/#3 [https://perma.cc/R36Q-UUVB].

[39]Press Release, U.S. Dep't of Health & Human Services, HHS Joins CFPB to Protect Nursing Home Residents and Their Caregivers from Illegal Debt Collection Practices (Sept. 8, 2022), https://www.hhs.gov/about/news/2022/09/08/hhs-joins-cfpb-protect-nursing-home-residents-and-their-caregivers-illegal-debt-collection-practices.html [https://perma.cc/8KM8-GKZ9].

imbalanced.[40] Per Ambrogi, many elders that seek admission to a nursing home are particularly vulnerable: prospective residents typically suffer from some form of mental or physical illness, are unmarried, and already depend on some assistance for routine daily activities.[41] Additionally, a host of issues with admission agreements further disadvantage residents and their relatives, such as small font size and limited readability, the rushed nature of the admission process, and unfavorable "responsible party" clauses.[42] Notably, Ambrogi argues that some mandatory "responsible party" clauses diminish the resident's autonomy by allowing nursing homes to deal directly with the responsible party on important matters related to the resident's care—even if the resident is competent enough to manage their own affairs.[43] Ambrogi also asserts (1) that nursing homes furtively use vague contractual language to establish the relative's financial liability without explicitly saying so, and (2) that "responsible party" requirements contradict the FNHRA.[44] Ambrogi's contentions are correct. Indeed, a "responsible party" clause that requires a relative to assume personal financial liability is facially invalid under the FNHRA.[45] However, Ambrogi's article was published in 1990, only three years after the FNHRA's passage. Since then, fewer admission agreements *explicitly require* a responsible party to assume financial liability. As discussed in Part IV, nursing homes now circumvent the FNHRA by using contractual language that deems a "responsible party" clause *voluntary* rather than mandatory, even though the relative signing the agreement often does not recognize this distinction or its risks.[46] In the years after Ambrogi's article, courts have authorized nursing homes to solicit these seemingly voluntary financial guarantees from relatives.[47] Even so, this Note argues that problematic nursing home protocols and the stressful realities of admission blur the distinction between a voluntary guarantee and a required one.

Eric Carlson, another author who has written extensively on the legality of "responsible party" clauses,[48] highlights at least two distinct problems with these clauses: (1) these clauses are misleading because relatives sometimes assume a "responsible party" is merely a contact person, and (2) relatives gain nothing from signing, which contradicts one of the key principles of contract law, consideration.[49] Carlson also briefly addresses another, more pertinent problem: "[s]ome nursing home admission agreements claim that a responsible party is not guaranteeing the resident's financial obligations but instead is promising to take all necessary steps (including the filing of a Medicaid application) to arrange for payment of the resident's nursing home bills. In practice such language is used by nursing homes as

[40]Donna Myers Ambrogi, *Legal Issues in Nursing Home Admissions*, 18 L. Med. & Health Care 254, 255 (1990).

[41]*Id.* at 255.

[42]*Id.* at 256-58.

[43]*Id.* at 258.

[44]*Id.* at 258.

[45]*See* 42 U.S.C.A. § 1395i-3(c)(5)(A)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(A)(ii) (West).

[46]*See Podolsky*, 50 Cal.App.4th at 646 (finding that "responsible party" in admission agreement was merely *solicitation* of voluntary third-party guarantee and thus did not violate the FNHRA) and relevant discussion in Part IV Section 1, *infra.*

[47]*See, e.g.*, *id* (approving nursing home's solicitation of voluntary third-party guarantee under the FNHRA, though ultimately ruling against nursing home for deceptive business practices under state law); Pioneer Ridge Nursing Facility Operations, L.L.C. v. Ermey, 203 P.3d 4, 7-8 (Kan. App. 2009) (discussing how FNHRA does not prohibit nursing homes from asking relatives to *voluntarily* act as resident's financial guarantors, so long as that guarantee is not required for admission); Manor of Lake City, Inc. v. Hinners, 548 N.W.2d 573, 576 (Iowa 1996).

[48]*See, e.g.*, Carlson, *supra* note 26, at 525; Carlson, *supra* note 19.

[49]Carlson, *supra* note 26, at 524-25; Carlson, *supra* note 19, at 38-39. Hypothetically, nursing homes could offer additional benefits to the relative and/or the resident as consideration for the relative's signature on the "responsible party" clause—benefits that are not available to those families that do not sign (e.g., lower prices). However, to this Author's knowledge, the literature does not mention any such benefits. In fact, scholars usually suggest the opposite: that relatives and residents gain nothing from "responsible party" clauses. *See* Carlson, *supra* note 26, at 524-25; Carlson, *supra* note 19, at 38-39; Rebecca J. Benson, Check Your Rights at the Door: Consumer Protection Violations in Massachusetts Nursing Home Admission Agreements, at ii, 16 (1997) (examining forty-five admission agreements and concluding that eighty-seven percent of the agreements "seek the signature of a 'voluntary responsible party,' despite the fact that such an agreement would provide no benefit to the resident, family member, or friend."); *see also Podolsky*, 50 Cal.App.4th at 654-56 (reversing lower court judgment for nursing home in part because "responsible party" clause signed by relative may have lacked consideration).

an illegal financial guarantee."[50] In other words, nursing homes accuse relatives of failing to "take all necessary steps" and sue for the resident's unpaid balance, thereby treating the relative as a *de facto* financial guarantor.[51]

At first glance, the "problem" Carlson identifies seems largely unproblematic: it would be unrealistic to ban nursing homes from enforcing *any* contractual obligation undertaken by a relative—and if that contractual obligation is not a mandatory financial guarantee, the FNHRA seemingly poses no bar to doing so.[52] However, a nursing home will sometimes file suit against a relative regardless of whether it can prove that the relative's actions caused the nursing home to stop receiving payment.[53] In other instances, the nursing home will delay in notifying the relative that Medicaid or Medicare has denied or terminated the resident's benefits, which increases the amount that the relative could be on the hook for.[54] These nursing home practices—whether committed in bad faith or not—make relatives susceptible to abuse. The government should therefore adopt more aggressive enforcement actions that deter nursing homes from filing unsubstantiated suits against a relative. CMS should also require nursing homes to make every possible effort to inform the "responsible party" as soon as possible that a resident is accruing expenses without Medicaid coverage. Other solutions to the issues raised by Carlson and Ambrogi are discussed in Part V.

Next, Part IV outlines the different types of "responsible party" clauses and their compatibility with the FNHRA while examining the clauses' consequences for relatives.

IV. The Legal Landscape of "Responsible Party" Clauses and Brief Reactions

Not all "responsible party" clauses are the same. They can be organized into two main categories of promises made by the relative: (1) a promise to personally act as the resident's financial guarantor, or (2) a promise to ensure continuity of payment to the nursing home, either by using the resident's assets to do so or by helping the resident maintain their Medicaid eligibility so Medicaid can pay the nursing home.

(1) a promise to personally act as the resident's financial guarantor

Subsection A bans nursing homes from requiring third-party financial guarantees *as a condition of admission*.[55] Therefore, the legality of a relative's promise to act as a guarantor turns on whether such a promise was *required* or *voluntary*.[56] This distinction is explored and scrutinized below.

In *Podolsky v. First Healthcare Corp.*, the court held that an admission agreement did not violate the FNHRA because its "responsible party" clause was a "solicitation of otherwise voluntary third-party guarantors."[57] The "responsible party" clause at issue was described as follows:

> [the clause] states that the guarantor personally guarantees payment to FHC for all care, supplies or services provided to the resident. **The guarantor "acknowledges that he/she understands that he/she is not required, and cannot be required, to sign a Guarantee of payment as a condition of**

[50] Carlson, *supra* note 26, at 525.

[51] *See id.*

[52] *See* 42 U.S.C.A. § 1395i-3(c)(5)(A)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(A)(ii) (West).

[53] *See, e.g.*, Prospect Park Nursing Home v Goutier, No. 103442/04, 2006 WL 2251908, at *4 (N.Y. City Civ. Ct., Aug. 07, 2006) (nursing home offered no proof that relative had access to resident's assets such that relative could have made payments to the nursing home).

[54] *See, e.g.*, *Kessler*, 213 N.E.3d at 838 (nursing home waited two months to contact relative after learning resident's Medicaid benefits had been terminated); Statement of Robyn King, *supra* note 11 (Ohio nursing home took several months to inform relative that her mother's Medicaid benefits had not been re-approved, causing relative to face unexpected $70,000 bill).

[55] 42 U.S.C.A. § 1395i-3(c)(5)(A)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(A)(ii) (West).

[56] *See Podolsky,* 50 Cal.App.4th at 646.

[57] *Id.* at 646.

> **admission of Resident to Facility, or as a condition of Resident remaining in Facility."** It also provides that the guarantor can terminate the agreement at any time by written notice, ending his obligation for any charges incurred after that time. The recited consideration for the guarantee is FHC's promise to send monthly copies of the resident's bill to the guarantor and to defer sending a notice of discharge to the resident until 15 days after a written notice of delinquency has been sent to the guarantor. **Finally, the agreement concludes by stating in capital letters once more the guarantor's understanding that he is not required to sign the guarantee, that the guarantee cannot be required as a condition of admission or continued residence in an FHC facility**, and that the guarantor should ask questions about the guarantee before signing it.[58]

The bolded language was crucial to the court's holding that this guarantee was voluntary, not conditional. The court found that, "[h]ad Congress intended to forbid third party guarantees under any circumstances, we presume it would have said so."[59] And so, this seemingly voluntary "responsible party" clause did not violate Subsection A's ban on mandatory third-party guarantees.

But the court had more to say. The court then found that the circumstances *surrounding* the nursing home's solicitation of this voluntary guarantee were potentially deceptive. First, the court recognized that admitting a loved one into a nursing home is an "emotionally-charged, stress-laden event."[60] Next, in discussing the *manner* in which the nursing home solicited these guarantees from the relatives, the court recounted eyebrow-raising allegations of the nursing home's problematic admission protocols: stacks of documents were hurriedly presented with little explanation; nursing home staff directed relatives to simply sign on the lines marked with an "X"; and, in at least one instance, relatives were told their signature as a "responsible party" was required—directly at odds with the clause's "voluntary" language.[61] Considering these allegations, the court ruled that even if the admission agreement was facially compliant with the FNHRA, there was a triable question of fact as to whether these nursing home protocols deceived relatives into believing they *had* to sign as guarantors.[62]

The *Podolsky* Court rightly gave significant weight to the potentially deceptive effects of the nursing home's admission protocols. A myopic focus on the text of the "responsible party" clause ignores the realities surrounding the solicitation of these guarantees. How effective is the FNHRA's ban on required third-party guarantees if it can be satisfied by inserting the word "voluntary" into the clause a few times? Aggressive nursing home practices can convince relatives that they must act as financial guarantors despite what the admission agreement says; in this way, nursing homes essentially circumvent the FNHRA.[63] Plus, most laypeople's untrained eyes are not likely to spot the difference between a *voluntary* and a *conditional* guarantee—a problem compounded by the urgent and rushed nature of admissions.

Nursing homes are unlikely to change these aggressive tactics because it is in their interest to obtain these guarantees from the relative, who likely has more assets and a higher income than the resident.[64] Because current CMS regulations on this topic are scarce and mostly repeat the language of the FNHRA,[65] additional regulation is needed to ensure that admission protocols respect Subsection A's protections for relatives, both on paper and in practice.

Though *Podolsky* was decided in 1994, nursing homes still engage in similarly concerning solicitations of financial guarantees. In 2020, two Washington D.C. nursing homes—the Washington Center for

[58] *Id.* at 642 (emphasis added). Though this clause uses the word "guarantor," the court found no difference between the terms "guarantor" and "responsible party" for purposes of its analysis. *Id.* at 645.

[59] *Id.* at 646.

[60] *Id.* at 652.

[61] *Id.* at 652-53.

[62] *Id.* at 652-54.

[63] *See id.* at 652-54.

[64] "Ahmad Keshavarz, an attorney who documented debt lawsuits around New York City, said nursing homes see adult children as more appealing targets than older residents. 'Sons or daughters are more likely to have assets,' he said. 'They have wages that can be garnished.'" Levey, *supra* note 1.

[65] *See* 42 C.F.R. § 483.15 (2021).

Aging Services and the Stoddard Baptist Nursing Home—signed an agreement with the Office of the Attorney General for the District of Columbia ("D.C. OAG") to cease what the D.C. OAG described as "deceptive billing practices."[66] According to the D.C. OAG:

> family members were required to sign an Admission Agreement that identified them as a "Responsible Party." This document suggested that these non-residents were responsible for paying the senior's expenses, and on numerous occasions, these nursing facilities tried to collect money from family members if the resident or their insurance failed to pay bills on time. Misleading collection letters to family members stated that if payments were not made, they would be "personally liable for such amounts" because they were "financially responsible for the terms of [the Admissions Agreement]."[67]

Though this matter did not reach litigation and the "responsible party" clauses at issue are not publicly available, these allegations strongly suggest that nursing homes continue to flout the FNHRA by pressuring relatives to believe they *must* act as guarantors. Indeed, under the agreement, the D.C. nursing homes promised (1) to modify their admission agreements to remove the phrase "Responsible Party" or "any other term that suggests that a non-resident is responsible to pay for a resident's case," (2) to include a "prominent and easy-to-read" disclosure adjacent to the signature line of any document that commits the relative to pay for the resident's care that warns the relative they are not obligated to do so, and (3) to "not engage in any unlawful trade practice prohibited by … the Federal Nursing Home Reform Act."[68]

In short, nursing homes' use of "responsible party" clauses runs up against the FNHRA, either by outright ignoring Subsection A and requiring relatives to personally guarantee the resident's bills (as with the D.C. nursing homes), or by using contractual language that makes these guarantees seem "voluntary" while creating a stressful and misleading admission process that compels the relative to sign (as in *Podolsky*).

(2) a promise to ensure continuity of payment

Other forms of the "responsible party" clause are used by nursing homes to hold relatives responsible for the resident's unpaid bill. In these scenarios, relatives contractually promise to take certain actions to ensure the nursing home receives payment, which include (i) using the resident's assets to pay the nursing home directly, and/or (ii) applying for Medicaid on the resident's behalf and submitting all necessary documentation to maintain the resident's Medicaid eligibility. These two corollaries of the promise to ensure payment are discussed below.

(i) "Responsible party" clauses that penalize a relative for not using the resident's assets to pay the nursing home are valid under Subsection B.[69] First, though, nursing homes must present some evidence that the relative had actual access to the resident's assets.[70] In *Prospect Park Nursing Home v. Goutier*, a nursing home's breach of contract claim was dismissed because the nursing home failed to show (1) that the relative—the resident's friend who signed the admission agreement as a "responsible party"—had

[66] Off. of the Att'y Gen. for the Dist. of Columbia, *Stopping Deceptive Billing Practices at Nursing Homes* (July 30, 2020), https://oag.dc.gov/blog/stopping-deceptive-billing-practices-nursing-homes [https://perma.cc/AEX8-5VGD].

[67] *Id.* (brackets in original).

[68] Assurance of Voluntary Compliance, *in re* Stoddard Baptist Global Care, Inc. and Washington Center for Aging Services 4-5, https://oag.dc.gov/sites/default/files/2020-07/Stoddard-WCA-AVC.pdf [https://perma.cc/PV79-KV8R] (last visited Aug. 24, 2023) [hereinafter "Assurance of Voluntary Compliance"]. Tracking the language of Subsection B, this Assurance of Voluntary Compliance also included an exemption provision that permits nursing homes to "require a non-resident who has control over the resident's funds to pay the [nursing home] with the resident's funds." *Id.*

[69] *See* 42 U.S.C.A. § 1395i-3(c)(5)(B)(ii) (West); 42 U.S.C.A. § 1396r(c)(5)(B)(ii) (West).

[70] *See Prospect Park Nursing Home*, No. 103442/04, 2006 WL 2251908, at *4.

meaningful legal access to the resident's assets and (2) that the resident had enough assets to pay the nursing home bill in the first place.[71] Proof that a relative had the resident's durable power of attorney usually satisfies this threshold requirement.[72] Courts then validate these "responsible party" clauses under Subsection B so long as the relative is limited to using only the resident's assets and not their own. But if the relative does not follow through, they become personally liable for the resident's unpaid bill.[73] Thus, in *Sunshine Care Corp. v. Warrick*, a nursing home successfully argued that the following "responsible party" clause was valid under the FNHRA:

> The agreement stated, inter alia, that the designated representative agrees to "provide payment from the resident's income or resources to the extent that he/she has access to such income and resources without the designated representative incurring personal financial liability"…. However, the agreement goes on to state that the designated representative would incur personal liability "if her actions or omissions have caused or contributed to the nonpayment of Facility's fees," and that such actions or omissions included "(i) a failure to utilize the resident's funds to pay for the resident's care at the Facility when the designated representative has control over the resident's funds by way of a Power of Attorney [or] access to joint accounts, [or] (ii) misappropriating the resident's funds." Thus, the defendant could be held personally liable for the cost of the decedent's care if it was shown that she breached the terms of the agreement by impeding the nursing home from collecting its fees from the decedent's funds or resources over which the defendant exercised control.[74]

The court then held that the relative had shirked their contractual obligation to pay the nursing home using the resident's funds and was therefore personally liable for the full amount owed to the nursing home.[75]

(ii) Another duty that "responsible party" clauses frequently assign to relatives is the duty to assist the resident in applying for and maintaining Medicaid benefits. This duty can consist of helping the nursing home compile the necessary documentation for the resident's Medicaid application, or, in some cases, filing the application independently on the resident's behalf.[76] Nursing homes lean on these promises to blame the relative for the denial of the resident's benefits—and by extension, the suspension of payment to the nursing home.[77] In *Meadowbrook Center, Inc. v. Buchman*, a relative contractually agreed to "inform the [f]acility of the status of the [r]esident's assets," to apply for Medicaid on the resident's behalf, to provide all timely documentation required for the application, and "to act promptly and expeditiously to establish and maintain eligibility for Medicaid assistance," and then failed to do so.[78] The court upheld the clause's validity under the FNHRA and ruled that the relative was liable for the unpaid expenses caused by the resident's lack of Medicaid coverage.[79]

Relatedly, nursing homes must also demonstrate that the relative's failure to cooperate was the direct and proximate cause of the nonpayment.[80] In *Nassau Operating Co., LLC v. DeSimone*, a relative agreed

[71] *Id.*

[72] *See, e.g.*, *id.* at *3-4 (no proof that relative had legal access to resident's assets where relative did not have power of attorney when he signed admission agreement nor while resident was living in nursing home); Sunshine Care Corp. v. Warrick, 957 N.Y.S.2d 122, 124 (N.Y. App. Div. 2d Dept. 2012).

[73] *See Warrick*, 957 N.Y.S.2d at 124.

[74] *Id.* at 124.

[75] *Id.* at 124-25.

[76] *See, e.g.*, *Buchman,* 90 A.3d at 223, 238-240.

[77] *See id.* at 238-41.

[78] *Id.*

[79] *Id. But see Kessler*, 2023 WL 3162188, at * 10 (holding that relative is not liable for failure to fulfill contractual promise to participate in resident's Medicaid eligibility process, and that such promises are not enforceable under the FNHRA).

[80] *See* Nassau Operating Co., LLC v. DeSimone, 171 N.Y.S.3d 528, 536-37 (N.Y. App. Div. 2d Dept. 2022).

to "be held personally responsible and liable if his/her actions or omissions have caused and/or contributed to nonpayment of the [plaintiff's] fees."[81] The nursing home accused the relative of failing to "timely document and secure Medicaid payments," but the relative avoided liability because the court found that the resident's denied Medicaid application was not affected by the relative's neglect of their contractual duties.[82]

To sum up, courts have consistently held that the FNHRA poses no barrier to requiring relatives to take actions that help a nursing home get paid, so long as those responsibilities are not tantamount to a financial guarantee. That is a reasonable approach. After all, nursing homes are businesses that need to be paid and be able to vindicate their contractual rights. But, momentarily putting aside the problematic nursing home practices previously discussed, the caselaw rarely discusses the impact of bad faith acts by the nursing home. For instance, some nursing homes are aware that a resident's Medicaid benefits have been denied or terminated but then delay in notifying—either purposefully or carelessly—the relative of the same.[83] In this interim period, expenses accrue. The relative later faces a higher bill, more demanding collection efforts, and a lawsuit with higher stakes, some of which could have been avoided had the nursing home provided timely notice to the relative.[84]

With an understanding of the FNHRA's intricacies and shortcomings, Part V examines existing proposals for some of the problems identified above and offers new solutions.

V. Proposed Solutions

The FNHRA's biggest flaw is its failure to account for the harsh realities of the nursing home admission process. As courts and scholars have recognized, admitting a loved one into a nursing home is a uniquely stressful event.[85] Nursing homes hold all the cards, and relatives' ability to "shop around" and compare different admission agreements is limited, leading to a great power imbalance between the parties.[86] Relatives receive little guidance from the nursing home and are rushed to "sign here" without a proper understanding of what they're signing.[87] And again, nursing homes have no incentive to stop these practices; it is in the nursing home's interest to obtain as many contractual guarantees and promises from the relative as possible.[88] Accordingly, this area is ripe for new regulation on how nursing homes should approach the admission process and the solicitation of contractual responsibility from third parties.[89]

Implementing a "waiting" period of at least one day between the resident's admission and any solicitation of a voluntary guarantee from the relative would create a clear separation between the two events and mitigate mixed messaging about whether such a guarantee is *required*.[90] This idea was proposed by the *Podolsky* court in 1994, but no evidence suggests that it has been widely adopted by nursing homes or enacted by legislatures since then. Under this proposal, nursing homes could still protect themselves by obtaining other contractual assurances at the time of admission, such as the

[81] *Id.*

[82] *Id.*

[83] *See, e.g.*, Statement of Robyn King, *supra* note 11; *Kessler*, 2023 WL 3162188, at *7 (nursing home took several months to contact relative about resident's Medicaid denial).

[84] *See* Statement of Robyn King, *supra* note 11; *Kessler*, 2023 WL 3162188, at *7.

[85] *See Podolsky,* 50 Cal.App.4th at 652; Part III, *supra* (reviewing literature).

[86] *See* Lesher et al, *supra* note 30, at 259.

[87] *See id.* at 259; *see also* Part II, *supra* (discussing typical admission process).

[88] *See supra* note 64 and accompanying text (describing how adult children are "more appealing targets" for lawsuits than older residents, because the former likely has more assets). Again, this claim relies on the assumption that nursing homes do not lower their prices in exchange for such contractual guarantees and promises.

[89] As discussed *supra* in Parts I and II, existing regulations mostly track the language of the FNHRA. *See* 42 C.F.R. § 483.15(a)(3) (2021).

[90] *See Podolsky*, 50 Cal.App.4th at 657.

previously discussed promise to ensure continuity of payment by using the resident's assets or by helping the resident apply for Medicaid. Though it might be burdensome to require a nursing home to hold a separate meeting with a relative to solicit a voluntary guarantee, this burden is outweighed by the massive financial liability that a relative assumes in these scenarios.

Other regulatory changes could also improve the nursing home admission process by increasing transparency. For example, as in Washington D.C., nursing homes should be required to include easy-to-read, bolded text explaining that relatives *cannot* be required to assume personal financial liability under FNHRA Subsection A.[91] Going one step further, the bolded text should also inform relatives that they *can* be held liable for failing to ensure the resident's continuity of payment under FNHRA Subsection B. Although "responsible party" clauses already typically include some language that says a relative can be held personally liable for their failure to fulfill these promises, this point bears emphasis and should not be buried in the fine print. Plus, this proposal would also counteract small print and limited readability, which are significant problems with admission agreements.[92]

Additionally, CMS could create a script to be read by the nursing home to all residents and relatives during admission to fully advise them of their rights and protections under federal law. Using a CMS script would cost the nursing home almost nothing to implement and would leave little room for misunderstanding on the relative's part. However, without an effective enforcement mechanism, this reform could be easily evaded. Therefore, CMS should also require nursing homes to include a representation in every admission agreement that roughly states as follows: "the Nursing Home represents that it has advised the Resident and the Responsible Party of all rights, protections, and information available to them under state and federal law, including, but not limited to, all nursing home disclosures mandated by the Centers for Medicaid and Medicare." Nursing homes will have greater incentive to make sure residents are fully informed and are read the script, or otherwise risk invalidating the admission agreement.

Alternatively, CMS could provide guidance to nursing homes by creating a FNHRA-compliant model "responsible party" clause that clearly and thoroughly explains the responsibilities that residents and relatives are assuming. Because many relatives have expressed surprise and shock at being sued by nursing homes,[93] more transparency and better communication between all parties are needed during admission.

The Medicaid application process must also be refined. The Medicaid program is deeply intertwined with U.S. nursing home care.[94] Accordingly, any institutional change to the FNHRA and to nursing home practices must be accompanied by some significant change to Medicaid (and Medicare, though the latter covers a smaller number of residents[95]). As previously explained, when a resident's Medicaid application is denied or not filed in a timely manner, nursing homes cannot receive payment from CMS, so they sue relatives to recover the unpaid amount.[96] The longer it takes for a Medicaid application to be submitted, or for an application to be granted or denied, the more a resident's medical expenses accrue with the risk that they might not be covered. If an application is ultimately rejected, the relative and resident should have sufficient time to adjust accordingly before liability becomes too great. Unfortunately, Medicaid applications are complicated and are commonly rejected, for instance, if the applicant does not provide all necessary documentation[97]—and a relative filing out an application may not have ready access to these documents, especially if they are not a member of the resident's immediate family,

[91] *See* Assurance of Voluntary Compliance, *supra* note 68.
[92] *See* Ambrogi, *supra* note 40, at 256.
[93] *See* Statement of Robyn King, *supra* note 11; Levey, *supra* note 1.
[94] *See* Chidambaram, *supra* note 13.
[95] *See id.*
[96] *See Buchman*, 90 A.3d at 223-24, 238-240; Carlson, *supra* note 26, at 524-25.
[97] *Common Reasons for Medicaid Denial*, E.A. Goodman L., https://www.eagoodmanlaw.com/medicaid-planning/common-reasons-for-medicaid-denial/ [https://perma.cc/NF2X-X3ND] (last visited Apr. 10, 2023).

thus causing additional delay. CMS and state health agencies should simplify and streamline the Medicaid application process to lessen the time residents and their relatives are left in administrative limbo. Given the high cost of nursing home care and the large impact that an application denial can have on other parties besides the applicant, Medicaid should prioritize applications related to nursing home care to produce eligibility decisions more quickly. This proposal would make it easier for residents and relatives to understand whether they need to seek alternative payment sources during the early stages of nursing home care before costs become overwhelming.

Lastly, being able to go over an admission agreement with a lawyer would help relatives understand important—but complicated—topics, like the distinction between a *voluntary* and a *conditional* financial guarantee. But this proposal is unrealistic given the cost of hiring a lawyer and the time-sensitive nature of nursing home admissions. Perhaps this solution could take the form of a newly created "nursing home family advocate" position—similar to a case manager in a hospital[98] or a social worker—whose sole responsibility is to carefully walk through admission paperwork with the resident and their relative. This advocate might, for example, go over the resident's rights under the FNHRA in detail and answer questions. Or the advocate might explain that, while the relative is not required to personally guarantee the resident's nursing home bills, the nursing home still has other avenues to sue the relative and recover the resident's medical costs. This way, all parties will have a clearer understanding of the risks they are assuming. A version of this proposal already exists—most state governments have ombudspersons[99] available to help residents resolve disputes with their nursing home and to educate residents and their families about their rights.[100] However, ombudspersons are not mentioned frequently in caselaw or literature, suggesting that this is not a well-known or well-utilized resource. More efforts to spread awareness of this valuable resource are needed.

VI. Conclusion

In conclusion, a recent uptick in nursing home debt collections has drawn attention to the role of admission agreements in causing relatives to be financially liable for their loved one's care. Many relatives unwittingly assume this financial responsibility when they sign the agreement's "responsible party" clause. These clauses include carefully worded promises made to the nursing home, which the nursing home later uses to sue the relative for breach of contract to recover the resident's unpaid balance. Courts have primarily held that "responsible party" clauses comply with the FNHRA so long as they do not explicitly require a relative to act as the resident's financial guarantor. In practice, however, nursing homes possess various methods for achieving the same result and holding a relative personally liable for a resident's debts without running afoul of the FNHRA. In response to these issues, CMS should protect relatives by requiring a one-day waiting period between admission and the nursing home's solicitation of a "responsible party," and by requiring nursing homes to incorporate larger print and clearer textual and verbal explanations about the role of a "responsible party" into the admission agreement. The Medicaid application process should also be streamlined to decrease the time residents accrue expenses without coverage, which will lessen the relative's potential liability.

[98] *See, e.g., Case Management*, Tufts Med. Ctr., https://www.tuftsmedicalcenter.org/patient-care-services/patient-and-family-services/case-management [https://perma.cc/HLR6-FNZN] (last. visited Oct. 6, 2023).

[99] An "ombudsperson" or "ombudsman" is "a person who investigates, reports on, and helps settle complaints: an individual usually affiliated with an organization or business who serves as an advocate for patients, consumers, employees, etc." Ombudsman, Merriam-Webster, https://www.merriam-webster.com/dictionary/ombudsman (last visited Nov. 7, 2023).

[100] *E.g.*, Florida Ombudsman Program – Advocating for Quality Long-Term Care, https://ombudsman.elderaffairs.org [https://perma.cc/DSL5-FQQ2] (last visited Aug. 23, 2023); Massachusetts Long-Term Care Ombudsman Program, https://www.mass.gov/info-details/learn-more-about-the-ombudsman-program [https://perma.cc/9PCP-9EVP] (last visited Aug. 23, 2023).

Lastly, nursing homes should employ a designated advocate who will explain the legal risks and liabilities associated with admission agreements.

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