Think Twice Before Signing

Improper and Unfair Provisions

in Missouri Nursing Home Admission Agreements

National Senior Citizens Law Center
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## THINK TWICE BEFORE SIGNING:
IMPROPER AND UNFAIR PROVISIONS IN MISSOURI NURSING HOME ADMISSION AGREEMENTS

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EXECUTIVE SUMMARY

Introduction

Typically, an entering resident knows next to nothing about life in a nursing home. Consequently, she and her family commonly will defer to the nursing home’s policies and practices, trusting that the nursing home and its staff will follow laws and perform professionally.

Unfortunately, this trust can be abused, based on this study’s review of 175 admission agreements from nursing homes across Missouri. Many of the admission agreements contained provisions that conflicted with federal or Missouri law. Other provisions, although arguably compliant with law, could be used to insulate nursing homes from responsibility for their actions.

Of course, some admission agreements did comply with relevant law, and were fair to residents and their families. This report is written with the goal of educating consumers and nursing home operators, so that proper agreements will be written and used, legal requirements will be more widely known, and conflicts will be avoided.

Federal and State Law

The federal nursing home law – entitled the Nursing Home Reform Law — applies to every resident of any nursing home that is certified to accept payment from Medicare or Medicaid. Since over 97 percent of nursing homes are certified for either one or the other, or both, the Reform Law almost always will apply. The Nursing Home Reform Law focuses on residents’ individual needs. For example, the Reform Law requires that a resident’s care be based upon an individualized assessment and care plan, and that a nursing home make reasonable accommodations for an individual resident’s preferences.

Missouri law sets forth numerous standards for nursing homes, but most of these standards are overshadowed in practice by the Reform Law. In certain instances, however, Missouri law provides protections that are absent in federal law.

Under the Nursing Home Reform Law, a nursing home must provide the care that a resident needs to reach the highest practicable level of functioning. The Reform Law was written to counteract the warehousing mentality that too frequently characterized nursing homes prior to the Reform Law’s enactment. Although certain conditions are associated with aging, the Reform Law counsels that they not be considered inevitable. Care should be provided to prevent undesirable conditions such as incontinence or pressure ulcers. If such a condition nonetheless develops, then the nursing home must provide necessary treatment.

Altering Standard of Care

Lowered Expectations

Contrary to the Reform Law’s philosophy, however, a significant number of admission agreements focused excessively on the risks of aging and had the resident acknowledge certain injuries as essentially inevitable. Specifically, twenty-five percent of the admission agreements contained a provision that attempted to lower the expectations of nursing home residents and their fami-
lies. For example, one admission agreement had the resident agree that the nursing home’s services were “not designed to somehow protect the Resident from everyday, normal risks and responsibilities of living, including, but not limited to, such general accidents and situations such as falling, choking and weight loss and/or dehydration resulting from a Resident’s failure to partake of food and drink.” (Emphasis in original.) Many agreements similarly had the resident or resident’s representative agree that the nursing home was not responsible for providing anything more than “general duty” nursing care, and it would be the responsibility of the resident or the resident’s representative to obtain additional care if the resident’s needs were more extensive.

All such provisions are inappropriate and counterproductive. The lowering of expectations carries with it the danger of a self-fulfilling prophecy. These admission agreement provisions clearly are written to influence the expectations of residents and their family members, but undoubtedly also have an impact on nursing home employees. Better nursing homes today emphasize a “culture change” in which the nursing homes move towards care that is “resident-centered,” i.e., based on a resident’s individual needs. A culture of lowered expectations is a significant step in the opposite — and wrong — direction.

This is not to say that aging does not bring with it increased risk. But the risks should be discussed in care plan meetings, where the resident, resident’s family, and nursing home staff can decide jointly on the best possible plan of care. In other words, risk should be discussed in order to prevent bad outcomes to the extent possible, not to excuse a nursing home in advance for inadequate care.

Visiting Rights

Under the Reform Law, a resident’s family members are not subject to visiting hours. More than two-thirds of the admission agreements did not address visiting hours one way or the other. A small percentage of the admission agreements — five percent — contradicted the Reform Law by limiting family members’ visiting hours.

Waivers of Liability

Waiving Nursing Home’s Responsibility for Injury or for Lost or Stolen Property

The examined admission agreements contained a wide variety of liability waivers. These waivers claimed to eliminate or reduce a nursing home’s legal responsibility for a resident’s injuries, in situations in which the nursing home otherwise would have been financially liable.

One noteworthy admission agreement claimed that that the nursing home would “not be held responsible for accidents or injuries sustained by the Resident during residence in the Facility.” Another admission agreement broadly waived the liability of the nursing home and its employees.

One admission agreement eliminated the nursing home’s liability for non-economic damages. As a practical matter, this would almost entirely insulate the nursing home from responsibility for its own negligence. Because nursing home residents do not hold jobs and thus do not lose wages when injured, recoveries by nursing home residents consist almost entirely of non-economic damages such as damages for pain and suffering.
A common provision, found in 74 percent of the admission agreements, waived the nursing home’s responsibility for a resident’s personal property. Many agreements rejected liability unless the object in question had been specifically given to the nursing home for safekeeping, ignoring the fact that a resident’s personal property is useful only if the resident has easy access to it. Going further, some admission agreements broadly declared that the nursing home would not be liable for a resident’s lost or stolen property even if the nursing home were at fault.

**New Laws Needed to Address Liability Waivers**

The Nursing Home Reform Law does not explicitly discuss waivers of liability, and Missouri law is relatively lenient towards them – such waivers are permissible in consumer contracts, but the waiver must be clear, and its provisions are strictly construed against the party that benefits from the waiver. Outside of Missouri, by contrast, a waiver of liability in a consumer health care contract is almost always considered to be a violation of public policy and thus unenforceable.

Recognizing that waivers of liability in some instances might comply with current Missouri law, however, is not the same as approving of those waivers. This report takes the position that nursing home admission agreements should not contain waivers of liability, because a nursing home should be responsible for its staff’s negligent actions. A waiver of liability is never in the interests of a resident or family member, and waivers generally are signed only because the resident and family member do not know that they are waiving the nursing home’s liability, or feel that they have no choice.

This report recommends that Missouri law be revised to prohibit a nursing home admission agreement from ever, and in any way, waiving a nursing home’s liability. In the meantime, residents and their family members should be vigilant in identifying waivers of liability, and strong in refusing to sign admission agreements containing liability waivers.

**Requiring Arbitration of Disputes**

Arbitration is a form of alternative dispute resolution in which rulings are made not by judges and juries, but by a private arbitrator. Arbitration can be done only with the agreement of both parties to the dispute.

Arbitration often is considered disadvantageous for consumers, who generally prefer trial by jury. The right to a jury trial is granted by the Seventh Amendment to the United States Constitution, and jury trial is considered an important way in which the will of the people is expressed and protected. By contrast, there is a real possibility that the arbitrator will have an inclination (conscious or otherwise) to side with a business against a consumer, since the business may be in a position to give repeat business to the arbitrator and arbitration service. Also, arbitrators are generally attorneys, and generally do not offer the type of societal cross-section that is the hallmark of the right to jury trial.

In looking at arbitration agreements, it is important to note whether the agreement was entered into before or after the dispute arose. Pre-dispute arbitration agreements are objectionable. These agreements generally are part of an initial contract package prepared by a business for signature by a consumer, broadly referring future disputes to arbitration. The consumer likely signs the various documents while paying little or no attention to the arbitration provisions.
Indeed, during the nursing home admissions process, neither residents nor their families are thinking of how to resolve future disputes. Their focus is on more immediate and tangible concerns – the physical and emotional aftermath of an unexpected stroke, for example, or a family’s grief over a mother’s need for nursing home care.

Health care often is recognized as an inappropriate setting for pre-dispute arbitration agreements. Both the American Arbitration Association and the American Health Lawyers Association do not provide arbitrators under pre-dispute arbitration agreements for health care disputes, unless ordered by a court to do so.

In Missouri, as in many other states, a contract can be found unconscionable if the contract’s terms are unfair, and the circumstances of the contracting process had not given the disadvantaged party an adequate opportunity to negotiate a fair agreement. An arbitration agreement thus is unenforceable if its terms, along with the circumstances of its signing, demonstrate an adequate level of substantive and procedural unconscionability.

Eighteen percent of the examined admission agreements required arbitration as a condition of admission. Another four percent of the agreements offered arbitration as a purportedly voluntary option. These numbers likely understate the prevalence of arbitration agreements, since an arbitration agreement could be a document separate from the admission agreement itself.

**Right to Remain In, or Return to, Nursing Home**

**Authorizing Evictions**

Under the Nursing Home Reform Law, involuntary transfer or discharge is allowed only for one of six reasons. Nonpayment is one reason; a second reason is the nursing home going out of business. The other four reasons all are based on the resident’s health or behavior. Involuntary transfer/discharge is allowed if the resident no longer requires nursing home care (reason #3) or requires a level of care that cannot be provided in a nursing home (#4). The final two reasons are based on the protection of others in the nursing home – a resident can be transferred or discharged involuntarily if his presence endangers others’ health (#5) or safety (#6).

In the examined admission agreements, however, 17 percent of the nursing homes claimed the right to terminate a resident’s stay without a reason. Furthermore, of the nursing homes that listed reasons for an involuntary transfer/discharge, 46 percent included at least one reason not allowed by the Reform Law.

One admission agreement authorized transfer/discharge of a resident for being “unduly disturbing, unduly noisy, objectionably untidy, noncooperative or destructive in behavior and action.” In a similar vein, another admission agreement authorized transfer/discharge for a resident being “uncooperative or destructive to people or facility.” A third admission agreement broadly authorized involuntary transfer for any resident “becom[ing] uncooperative or unmanageable.”

Such justifications are objectionable both because they go far beyond the justifications allowed by the Reform Law, and also because they are inconsistent with nursing home reality. In fact, nursing home residents often are disturbing, untidy, uncooperative or destructive. They can’t help it – this type of behavior frequently results from Alzheimer’s disease and other dementias, which are common among nursing home residents. When presented with such
behavior, a nursing home should not transfer or discharge the resident – instead, the nursing home should assess the resident’s condition and develop a care plan that addresses the resident’s needs as best as possible.

**Limiting Rights to Bed Holds and Readmissions**

Under Missouri Medicaid rules, the Medicaid program will pay to hold a nursing home bed while the resident is hospitalized, but only for up to three days. In addition, under the federal Nursing Home Reform Law, a nursing home must offer readmission to the next available bed if the hospitalized resident is Medicaid-eligible and continues to need nursing home services.

A nursing home must notify a resident of these rights. As a practical matter, nursing homes giving this advance notice generally provide the notice as part of the admission agreement.

Of the examined admission agreements, only 32 percent of the agreements provided notification of a resident’s bed hold right. 46 percent of the agreements did not mention the bed hold right, while an additional 11 percent of the admission agreements disclaimed a bed hold right.

The right to readmission was more likely to be ignored entirely – 65 percent of the admission agreements said nothing about the federal readmission right. Twenty-five percent of the admission agreements acknowledged the right to readmission, while 4 percent of the admission agreements disclaimed any right to be readmitted.

**Requiring or Soliciting Financial Guarantees, Despite Federal Law to the Contrary**

Under the Nursing Home Reform Law, a nursing home cannot require a resident’s family member or friend to become financially liable for nursing home expenses. A no-guarantee rule makes sense in nursing home admissions because nursing home expenses are not limited to any particular amount, and because the Medicaid program steps in when a resident has inadequate financial resources.

Nineteen percent of the admission agreements required a financial guarantee, in direct violation of the Nursing Home Reform Law. Thirty percent of the agreements solicited, but did not require, a financial guarantee. The guarantor was commonly termed the “responsible party.”

For at least three reasons, such “voluntary” guarantees are improper. First, the admission agreement and the term “responsible party” are deceptive, because they often give the family member or friend the impression that a “responsible party” is only a representative or contact person. As a result, a family member or friend might sign as “responsible party” without understanding that she purportedly is becoming financially liable for all nursing home bills.

Second, admission agreements with supposedly “voluntary” guarantees can be used to require guarantors. It is easy for a nursing home staff member to tell a family member or friend that she must sign as “responsible party,” even if the guarantee provision is written as being voluntary.

Third and finally, a supposedly “voluntary” guarantee is unenforceable because it provides no benefit to either a resident or a “responsible party.” A “responsible party” signature has no effect on a resident’s admission; as explained above, the Nursing Home Reform Law prohibits a nursing home from requiring a guarantee as a condition of admission. Such a gratuitous promise, benefiting neither the resident nor the “responsible party,” is not enforceable “if the slightest
circumstance of fraud, duress, mistake, or undue influence is present.” Nursing home admissions are situations in which fraud, duress, mistake, and undue influence can easily occur, and thus a “voluntary” promise to be responsible for nursing home expenses would likely not be enforced.

This result – that a “voluntary” guarantee agreement is unenforceable and improper – comports with common sense. It is difficult to imagine a more one-sided agreement. It would be unfair to make a family member or friend liable based on an admission agreement provision that gave no benefit to the resident or to the resident’s family member or friend.

**Conclusion**

Missouri consumers should not take anything for granted. A nursing home admission agreement may or may not be consistent with relevant law, and frequently will contain provisions that disadvantage residents and their families.

Accompanying the report is a guide for residents and families entitled *Nursing Home Admission Agreements: Think Twice Before Signing*. The guide is available for free download from the National Senior Citizens Law Center at www.nsclc.org. The guide explains how consumers can contest admission agreement provisions that are inconsistent with law or otherwise improper, whether the provisions are discovered prior to admission or afterwards. In some circumstances, lawsuits may be brought to challenge admission agreement provisions that are inconsistent with law. The guide lists strategies and resources available to consumers.

Legislative action may also be appropriate. For example, after a report revealed numerous problems in Los Angeles County nursing home admission agreements, California law was amended to require the state’s nursing homes to use a standard admission agreement.

Ultimately, it is counterproductive for nursing homes to ignore, misrepresent, or disclaim relevant standards. Better nursing homes today pursue a “culture change” in which resident needs and preferences are given high priority. An improved culture will require honest, cooperative relationships between nursing homes, residents and family members. An important step in developing such a culture would be for nursing homes to acknowledge and follow relevant provisions of the Nursing Home Reform Law.
THINK TWICE BEFORE SIGNING:
IMPROPER AND UNFAIR PROVISIONS IN MISSOURI NURSING HOME ADMISSION AGREEMENTS

Introduction

An older person moves into a nursing home because she cannot live independently. The needs of a nursing home resident can be extensive. On average, a nursing home resident needs assistance with four activities of daily living (for example, dressing, eating, using the toilet, and bathing). Approximately sixty percent of nursing home residents have Alzheimer’s disease or a comparable dementia. Residents frequently are incontinent. A significant number of residents cannot even roll over in bed without assistance, and some residents require intravenous feeding or ventilator care.

A resident’s reliance on the nursing home thus is profound, and this reliance extends beyond physical necessities. Typically, an entering resident knows next to nothing about life in a nursing home. She likely has not lived in a nursing home before, and very probably has tried to avoid even thinking about nursing homes. Consequently, she and her family commonly will defer to the nursing home’s policies and practices, trusting that the nursing home and its staff will follow laws and perform professionally.

Unfortunately, this trust can be abused. As this study of admission agreements demonstrates, some nursing homes have established policies that conflict with law. Worse, these legal violations cannot be explained away as lapses by low-level employees. Rather, the improper policies have been instituted directly by nursing homes’ management and legal advisers.

This study’s findings are not unusual. Across the board, studies of admission agreements have found that the agreements often misrepresent the relevant law. This includes studies performed in Maine, Louisiana, North Dakota, Maryland, and Virginia, and two studies performed in California.1

Also, this study found admission agreement provisions that, while arguably legal under federal and Missouri law, are detrimental to nursing home quality of care. Some of these provisions insulate the nursing home from legal liability for its actions.

All this being said, this study also found some admission agreements that were generally in compliance with the law, and that established reasonable nursing home policies. This report is written with the goal of educating consumers and nursing home operators, so that proper agreements will be written and used, legal requirements will be more widely known, and conflicts will be avoided.

Nursing Home Law

Federal Nursing Home Reform Law

Since 1965, the federal government explicitly has regulated nursing homes. The federal interest in nursing homes has two primary bases. The first basis, of course, is the well-being of residents. The second basis is the substantial sum of money – over $65 billion annually – paid to nursing homes by the Medicare and Medicaid programs.2
The federal nursing home law – entitled the Nursing Home Reform Law – dates back to the mid-1980’s, when the Institute of Medicine and others reported that the existing federal law did not do enough to protect residents. In response, Congress enacted the Nursing Home Reform law in 1987, and it has been in effect since October 1990.

The Nursing Home Reform Law applies to every resident of any nursing home that is certified to accept payment from Medicare or Medicaid. Since over 97 percent of nursing homes are certified for either one or the other, or both, the Reform Law almost always will apply. The only exceptions are those few nursing homes with an ultra-wealthy clientele that can pay indefinitely without assistance from Medicare or Medicaid.

Consistent with the Institute of Medicine’s recommendations, the Nursing Home Reform Law focuses on residents’ individual needs. For example, the Reform Law requires that a resident’s care be based upon an individualized assessment and care plan. A nursing home must make reasonable accommodations for an individual resident’s preferences, and should provide the care that the resident needs to reach the highest practical level of functioning. A resident’s family members are allowed to visit any hour of the day or night. In brief, residents are to be treated as persons rather than reimbursement units, and a nursing home is to be homelike to the extent possible.

**Missouri Law**

Missouri law sets forth numerous standards for nursing homes, although these standards are overshadowed in practice by the Reform Law’s generally more stringent requirements. As discussed above, the Reform Law sets comprehensive quality of care requirements for any nursing home certified to accept reimbursement from Medicare or Medicaid. Consequently, the state nursing home laws are relevant mostly for those few nursing homes that are not certified for Medicare or Medicaid. Missouri nursing home law thus is cited infrequently in this report, since the studied admission agreements were obtained from nursing homes certified for both Medicare and Medicaid reimbursement.

In several instances, Missouri law provides protections that are absent in federal law. These instances are pointed out as relevant in this report.

**Purpose and Methodology**

Under both federal and Missouri law, the quality of nursing home care is a priority. This priority, however, is entirely dependent upon nursing homes’ compliance with the law. If the nursing homes do not follow the law, the priority is illusory.

This study examines admission agreements used by Missouri nursing homes, in order to gauge how the nursing homes comply with the federal Nursing Home Reform Law and relevant Missouri law. The admission agreements assumedly are prepared or approved by the nursing homes’ management and legal advisors, and thus represent the nursing homes’ policies.

If the admission agreements conflict with the law, it is fair to assume that the nursing homes’ actions can conflict with the law as well. In addition, an admission agreement that violates the law, or is deceptive or confusing, is likely to convince a resident or family member to accept a nursing home’s improper actions.

During 2005, the National Senior Citizens Law Center (NSCLC) arranged for obtaining 175 admission agreements from Missouri nursing homes certified for both Medicare and Medicaid.
reimbursement. To ensure that the admission agreements were representative of documents given to residents, the nursing homes were not told that the admission agreements were being obtained for a study. After the agreements were obtained, the names of the nursing homes were deleted from the agreements.

The admission agreements then were examined by Missouri attorney volunteers, using a checklist developed by NSCLC. Based on the completed checklists and on separate review of the admission agreements, this report was written by NSCLC attorney Eric Carlson, the Director of NSCLC’s Long-Term Care Project. Mr. Carlson has worked exclusively in long-term care issues for over 17 years, and is the author of the authoritative legal treatise Long-Term Care Advocacy (Matthew Bender & Co.). In a previous job, Mr. Carlson researched and wrote a study of Los Angeles-area admission agreements that led to California legislation requiring a state-developed standard nursing home admission agreement.9

Findings and Analysis

Agreements Claiming To Alter The Standard Of Care

Lowering Resident Expectations

Relevant Law

As discussed throughout this report, the Nursing Home Reform Law sets a high standard for nursing home quality of care. A central provision of the Reform Law obligates a nursing home to provide the services required for a resident “to attain or maintain the highest practicable physical, mental, and psychosocial well-being.”10 Although certain conditions are associated with aging, the Reform Law counsels that they not be considered inevitable. For example, the Reform Law’s regulations require that a nursing home provide services so that a resident can remain continent as long as possible. If incontinence proves inevitable, then the nursing home must provide appropriate care and treatment.11 This same progression of prevention first, and then treatment when necessary, is required by the Reform Law and its regulations in reference to many conditions, such as pressure ulcers.12

Many nursing home admission agreements, however, take a contrary position. Through explanations of “reasonable expectations” (or a comparable term), these agreements have the resident or resident’s representative acknowledge that aging is a risky process, and that certain conditions are essentially inevitable. These explanations, as presented, seem virtually unrelated to care planning, and instead appear designed to support a nursing home’s arguments that a resident has released the nursing home from responsibility. Such releases are inappropriate – the standard of care should be determined by relevant law, not by an admission agreement that the nursing home has had the resident or resident’s representative sign during the admissions process.

This is not to say that aging does not bring with it increased risk. Aging is indeed associated with skin breakdown, pressure ulcers, weight loss, dehydration, and falls, and residents and family members should understand the risk factors. This type of discussion, however, is best suited for care plan meetings in which nursing home employees can discuss risks with the resident or resident’s representative, with the goal of developing the best possible plan of care.13 In other words, risk should be discussed in order to prevent bad outcomes to the extent possible, not to excuse a nursing home in advance for inadequate care.
It should be pointed out that nursing homes are not automatically liable for every bad outcome. A nursing home is potentially liable only if its services have fallen below the standard of care. Furthermore, the standard of care itself takes into account the effects of aging, along with the fact that mistakes happen sometimes despite persons’ (and organizations’) best efforts to avoid them.

Also, it should be noted that the lowering of expectations carries with it the danger of a self-fulfilling prophecy. These admission agreement provisions clearly are written to influence the expectations of residents and their family members, but undoubtedly also have an impact on nursing home employees. Better nursing homes today emphasize a “culture change” in which the nursing homes move towards care that is “resident-centered,” i.e., based on a resident’s individual needs. Needless to say, a culture of lowered expectations is a significant step in the opposite – and wrong — direction.

**Results**

Twenty-five percent of the admission agreements contained at least one provision designed to lower the expectations of residents or their families. These provisions are placed below into four categories, for admission agreements that: (1) acknowledge risks of aging; (2) recognize the unavailability of “special duty” care; (3) acknowledge adequacy of the nursing home’s staffing; or (4) accept the nursing home’s occasional failure to meet standards.

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**Agreement Acknowledges Risks of Aging**

“Lowered expectations” provisions often discussed the risks of aging. One representative admission agreement listed the “**high risks** and consequences associated with aging and impaired physical condition” (emphasis in original):

- A high risk of skin breakdown and development of pressure ulcers secondary to significant time confined to bed or inability or unwillingness to eat and/or drink.
- The risk of significant weight loss and dehydration if the Patient’s physical condition is currently chronic or hereinafter deteriorates, which may diminish Patient’s nutritional and hydration input.
- The enhanced risk of falls and subsequent bruises, cuts or fractures, which then increases the already high risk of pressure ulcers.

(Exhibit 1) (All exhibit pages are included at the conclusion of this report.)

These statements are true and not objectionable in care planning and other similar contexts. In the context of admission agreements, however, such statements seem designed more to excuse inadequate care than to coordinate the care to be provided to the resident being admitted.
Agreement Claims that Resident Not Entitled to “Special Duty” Care

Many admission agreements claimed that the resident was not entitled to “continuous” or “special duty” care, even though (as discussed above) the Reform Law requires a nursing home to meet a resident’s individual needs, and makes no exception for (or mention of) “continuous” or “special duty” care. As illustrated in the following examples, admission agreements frequently required the resident or family to separately arrange for additional care, and to waive the nursing home’s liability for failure to provide such care:

The facility provides 24-hour nursing care. Under this system nurses are called to the bedside of the resident by signal system. If the resident is in such condition as to need continuous or special duty nursing care, it is agreed that such must be arranged by the resident or his/her legal representative or his/her physician and the facility shall in no way be responsible for failure to provide the same and is hereby released from any and all liability arising from the fact that said resident is not provided with such additional care.
(Exhibit 2)

GENERAL DUTY NURSING CARE: The Facility provides general duty nursing care. If the Resident is in such condition as to need continuous special duty nursing care, it is agreed that such must be arranged by the Resident or his/her legal representative or physician and that the Facility shall in no way be responsible for failure to provide the same and is hereby released from any and all liability arising from the fact that said Resident is not provided with such additional care.
(Exhibit 3)

Patient agrees that special duty nursing services must be arranged for by the Patient and Facility shall in no event be liable for any harm or loss for failure to provide the same.
(Exhibit 4)

A similar admission agreement had a resident and representative agree “that if they believe that the Resident is not receiving the level of care which meets their expectation,” they had “the right to either pay for additional care through the use of private-duty personnel or to remove the Resident from the Facility and place the Resident in another health care setting, which the Resident/Representative believes would be more suitable to the Resident’s needs.” (Exhibit 5)

Several admission agreements followed a standard format to set supposedly “reasonable expectations” for a resident and family members. Standard provisions included the following:

**Nursing Services:** Nursing staff work in the facility seven days a week, 24-hours a day. The Nursing Staff is assigned to provide reasonable and customary nursing and personal care. … Resident Family and Representative … recognize and agree that the services provided by this facility do not include one-on-one, seven days per week, 24-hours per day services and further, that their expectations shall be contingent upon this understanding.

**Service Limitations:** The parties hereto agree that the services provided by [the nursing home] and others within this facility are not designed to somehow protect the Resident from everyday, normal risks and responsibilities of living, including, but not limited to, such general accidents and situations such as falling, choking.
and weight loss and/or dehydration resulting from a Resident’s failure to partake of food and drink. Additionally, the parties hereto understand that the services provided by [the nursing home] do not include 24-hour; one-on-one seven (7) days per week monitoring of its Residents.

Refusal of Services: … Should a Resident refuse food, fluids, treatments, therapies, medications, grooming, therapeutic bathing, recommended health practices, care plans, etc. and/or refuse to comply with physician’s orders …, [the nursing home] shall in no way be responsible for the outcomes associated with such Resident behavior. This shall apply to mentally competent and incompetent Residents. (Exhibit 6 (emphasis in original))

This same admission agreement continued on to acknowledge the viewing of an accompanying “Setting Realistic Expectations” video by the resident and family members, and to consent to the use of the admission agreement and video as evidence in any legal proceeding or arbitration.

All of these provisions are objectionable under the standards of the Nursing Home Reform Law. A nursing home must provide the services required for a resident “to attain or maintain the highest practicable physical, mental, and psychosocial well-being,” and this standard does not exclude “continuous” or “special duty” care. It is unlikely that a resident truly would require “one-on-one, seven days per week, 24-hours per day services,” but if a resident required such a service level, the nursing home would be responsible for providing it. Adequate care is the nursing home’s responsibility, and it has no right to pass that responsibility off on the resident’s family. Furthermore, as a practical matter, families generally know little about health care or long-term care, often are emotionally overwhelmed, and thus are in an extremely poor position to provide for “special duty” care.

Note that a nursing home should not claim the expense of care as an excuse. The nursing home’s private-payment rate is set by the admission agreement and the nursing home, if it chose, could set a rate dependent on a resident’s care needs. If a resident’s care is reimbursed through the Medicare or Medicaid programs, the rate is set by federal or state law, respectively. The resident can be required to pay no more than the co-payment authorized by Medicare or Medicaid rules.

Agreement Claims that Staffing Levels Are Adequate

In a similar vein, some admission agreements had the resident or representative agree that the nursing home’s staffing level was adequate. One of these admission agreements stated:

By signing the Acknowledgement [sic] page of this Agreement, Resident acknowledges and agrees that the staffing of Facility is based on the number of residents in the Facility and their conditions. The Facility does not assign or provide one staff person to provide exclusive individual care (which is sometimes called “one-on-one” to Resident at all times. Resident agrees that the staffing level provided by Facility as described above is acceptable to Resident. (Exhibit 7)

This is a very significant concession by the resident. The adequacy (or inadequacy) of nursing home staffing levels is a fiercely contested issue both in public policy discussions and in litigation, and poor nursing home care often is the result of the nursing home’s failure to hire or schedule enough direct-care staff members. Accordingly, such acknowledgements are improper in an admission agreement. Obviously, the resident or representative at the time of admission is in no
position to agree that the nursing home’s staffing is “acceptable,” or that it actually and appropriately is based upon the number of residents and their conditions.

**Agreement Claims that Care Occasionally Will Fall Short of Standards**

Several admission agreements contained more limited acceptance of inadequate care, usually styled as the resident’s recognition that on occasion the care provided would fall short of standards. One admission agreement explained:

> [The nursing home] utilizes reasonable efforts to provide all goods and services to the resident in accordance with applicable law and the representations contained herein. However, because the provision of health care services is a personalized service requiring interventions on many occasions by many persons, the resident acknowledges that the standards and/or representations will not be satisfie[d] from time to time.  

(Exhibit 8)

Such an acknowledgment, although relatively moderate in comparison to the admission agreements’ other waivers and acknowledgements, is nonetheless inappropriate. The acknowledgement provides no specificity whatsoever, and thus could not be enforceable — Missouri law would not allow for such a wild card waiver of liability.

Notably, basic negligence principles themselves recognize the inevitability of some mistakes in the course of providing care over a period of time. Nursing homes should leave the determination of liability to the relevant law, rather than attempting to create or alter the standards through admission agreement language.

**Limiting Visitation Rights**

*Relevant Law*

A nursing home resident has the right to be visited by a family member at any time of the day or night. In releasing the federal regulations implementing the Nursing Home Reform Law, the federal government recognized that “immediate family or other relatives will no longer be subject to visiting hour limitations or other restrictions.”

This visitation right is consistent with the Reform Law’s philosophy that nursing home residents should retain as much independence as possible. Family members should not feel like trespassers, and should be free to visit without regard to visiting hours. Federal guidelines make it clear that even late-night visits can be easily accommodated, by having the visit take place in an empty common area rather than the resident’s (probably shared) room.

**Results**

Sixty-nine percent of the admission agreements did not address this issue one way or the other. Twenty percent of the agreements, however, did acknowledge a resident’s right to accept visits from family members at any time.
Five percent of the admission agreements limited the times during which a family member could visit. Several admission agreements clearly claimed the nursing home’s purported right to control visitors, allowing after-hours visits by family members only under limited circumstances:

Regular daily visiting hours for the facility have been established and posted. The facility reserves the right to limit any or all visitors.

Relatives or guardians and clergy, if requested by the resident or family, will be allowed to see critically ill residents at any time in keeping with the orders of the physician. (Exhibit 9)

Another agreement offered a slightly greater possibility of off-hours visits, but only at the nursing home’s discretion:

Visiting hours are from 10:30 AM to 8:30 PM. ... Any NECESSARY visits at another time will be at the discretion of the Administrator/DON/or the Charge Nurse on duty on that particular shift. (Exhibit 10)

AGREEMENTS WAIVING NURSING HOME’S LIABILITY AND/OR RESIDENT’S RIGHT TO JURY TRIAL

Waiving Nursing Home’s Liability for Personal Injury

Relevant Law

As discussed below, liability waivers were relatively common in the examined nursing home admission agreements. These waivers claim to eliminate or reduce a nursing home’s legal responsibility for a resident’s injuries, in situations in which the nursing home otherwise would have been financially liable.

The Nursing Home Reform Law does not explicitly discuss waivers of liability. Furthermore, Missouri law is relatively lenient towards liability waivers – such waivers are permissible in consumer contracts, but the waiver must be clear, and its provisions are strictly construed against the party that benefits from the waiver.22 By comparison, other states take a much harder line against such waivers. Outside of Missouri, a waiver of liability in a consumer health care contract is almost always considered to be a violation of public policy and thus unenforceable.23

This report’s discussion of waiver of liability issues, therefore, differs from most other discussions in this report. In general, this report focuses on admission agreement provisions that violate the law. Many liability waivers, however, might comply with current Missouri law.

Recognizing that waivers of liability might in some instances comply with current Missouri law, however, is not the same as approving of those waivers. This report takes the position that nursing home admission agreements should not contain waivers of liability, because a nursing home should be responsible for its staff’s negligent actions. A waiver of liability is never in the interests of a resident or family member, and waivers generally are signed only because the resident and family member do not know that they are waiving the nursing home’s liability, or feel that they have no choice.
This report recommends that Missouri law be revised to prohibit a nursing home admission agreement from ever, and in any way, waiving a nursing home’s liability. In the meantime, residents and their family members should be vigilant in identifying waivers of liability, and strong in refusing to sign admission agreements containing liability waivers.

**Results**

In the examined admission agreements, 19 percent of the nursing homes had an incoming resident limit the nursing home’s general liability. Another 15 percent of the admission agreements limited the nursing home’s liability to negligence or omission, and still another 28 percent of the admission agreements included a liability waiver of another type.

One noteworthy admission agreement claimed that that the nursing home would

\[
\text{not be held responsible for accidents or injuries sustained by the Resident during residence in the Facility, including participation in Activity functions, nor will the facility be responsible for money, valuables, prosthetic appliances, including but not limited to dentures, hearing aides [sic], and glasses, or jewelry of the Resident, nor for the clothing or personal articles not marked in accordance with the operating rules of the Facility. (Exhibit 11) }
\]

Similarly, another admission agreement waived the liability of the nursing home and also of “its affiliates or partners, [and] the directors, officers, employees, or agents of its affiliates or partners, [and] the directors, officers, shareholders, employees, or agents thereof.” (Exhibit 12) This same agreement specified that the nursing home would “not be responsible for the criminal acts of its agents or employees, or third parties.”

Some agreements limited the damages that could be awarded. These limitations could be drastic. For example, several admission agreements waived all non-economic damages – such as damages for pain and suffering — even though the damages suffered by nursing home residents tend to be overwhelmingly comprised of non-economic damages rather than economic damages such as lost wages:

\[
\text{In the event one party to this Agreement is found to be liable to the other party, the prevailing party’s damage shall be limited to his/her/its direct, economic damage. Under no circumstances shall a prevailing party’s damages include incidental, indirect, special, exemplary, consequential or non-economic damages. The term economic damages means those damages arising from pecuniary loss or harm, including but not limited to, costs for medical care, equipment and services, costs to repair or replace personal property and loss of income. Non-economic damages are those arising from non-pecuniary loss or harm, including but not limited to, pain, }
\]

**Limits Liability for Injury Suffered by Resident**

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<thead>
<tr>
<th>Limits Liability for Injury Suffered by Resident</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Expressly Limits General Liability</td>
<td>19%</td>
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<tr>
<td>Limits Liability to Negligence or Omission</td>
<td>15%</td>
</tr>
<tr>
<td>Other Limits on Liability</td>
<td>28%</td>
</tr>
<tr>
<td>No Limits on Liability</td>
<td>30%</td>
</tr>
<tr>
<td>None of the Above</td>
<td>9%*</td>
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</table>

* Totals to more than 100% due to rounding.
suffering, mental anguish or distress, inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life and loss of consortium.

(Exhibit 13)

Several agreements contained the somewhat accurate statement that the nursing home would not be liable for injuries “unless caused by the willful act or negligence of the Facility or our employees.” (Exhibit 14) This statement is true to the extent that it conveys the message that the nursing home will not be liable automatically for every injury suffered by a resident, but it errs in attempting to describe the nursing home’s liability with just a few words. The nursing home’s liability should be based upon the state of the law, and not on a sentence inserted into an admission agreement.

The same general analysis applies to another relatively common description of a nursing home’s liability. Many admission agreements included a paragraph identical or similar to the following:

The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an ensurer of the health, safety, or welfare of the Resident and assumes no liability as such.

(See Exhibit 15)

The “not an ensurer” language is accurate to the extent that it establishes that the nursing home will not be automatically liable for every resident injury, but it wrongfully suggests an unduly limited understanding of the nursing home’s responsibility. Residents are dependent upon the nursing home to a great extent, and the nursing home’s responsibilities and legal liabilities should reflect this reality. Once again, the nursing home’s liability should be based upon relevant law; the admission agreement should not attempt to set a separate standard.

Waiving Nursing Home’s Liability for Personal Property

Relevant Law

In these waivers, the admission agreement states in some way that the nursing home is not responsible for the loss or theft of a resident’s property. As discussed above (see p. 14), Missouri law is relatively lenient on waiver issues, allowing waivers in consumer contracts if waivers are clear, although strictly construing waiver terms against the entity benefiting from the waiver.

Furthermore, loss or theft of personal property is addressed only in a limited fashion by federal law. Under the Nursing Home Reform Law’s regulations, a nursing home must develop and implement a policy that prohibits misappropriation of resident property. Any alleged misappropriation of resident property must be investigated and also “reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).”

These laws are supplemented, however, by the laws and care standards that require a nursing home to assess each resident, and to create (and follow) an individualized care plan based on that assessment. Under these standards a nursing home must take appropriate responsibility for any activity that (as shown by assessment) the resident cannot complete independently. For example, if a resident’s dementia would limit a resident’s ability to keep track of her personal property, the nursing home would be required to assume some of that responsibility.
Seventy-four percent of the admission agreements purported to limit the nursing home’s responsibility for a resident’s personal property. Many agreements rejected liability unless the object in question had been specifically given to the nursing home for safekeeping, even though as a practical matter a resident’s personal property (eyeglasses, for example, or a television) often can be used only if it is immediately accessible to the resident. For example, one admission agreement stated that “Facility shall not be responsible for loss, theft or destruction of money, papers or personal property of Patient or any other person except as delivered to the Administrator for safe keeping.” (Exhibit 4) Several other admission agreements similarly stated that “[t]he Facility shall not be responsible for any money, valuables, or personal effects brought into the Facility by Resident, relatives, or friends unless delivered to the custody of the Facility’s Administrator for safekeeping.” (Exhibit 16)

Other admission agreements were similarly aggressive in shielding the nursing home from liability. One admission agreement, for example, allowed liability only for items specifically entrusted to the nursing home, or to losses caused by the nursing home’s intentional or grossly negligent conduct:

The Facility will not be responsible for theft, destruction, or other loss of money, papers, clothing, jewelry, dentures, eyeglasses, hearing aids, or other personal property unless the property was delivered to and accepted in writing by a Facility representative or the loss was caused by the Facility’s gross negligence or intentional misconduct. (Exhibit 17)

Some admission agreements broadly declared that the nursing home would not be liable for a resident’s lost or stolen property even if the nursing home were at fault. One admission agreement specified that, “[b]y executing this agreement, the resident and/or responsible party waive any claim they may have against the facility for loss or damage to items of personal property occasioned by the ordinary negligence of the facility or its employees.” (Exhibit 18) Bluntly, another admission agreement stated: “I [the resident] understand that [the nursing home] is NOT responsible for any damages and/or loss of personal belongings or valuables of any kind.” (Exhibit 19 (emphasis in original)) Similarly, in another admission agreement, a resident agreed “[t]o not hold the facility responsible or liable for the loss or damage of any money (not deposited in resident trust fund), jewelry, documents or any other personal property.” (Exhibit 20) A fourth admission agreement stated that “[a]lthough the Facility will work to see [that] misplaced belongings are recovered, the Facility is not responsible if they are lost, damaged or stolen.” (Exhibit 14)
Waiving Nursing Home’s Liability for Use of Restraints

Relevant Law

Physical restraints can only be used to “ensure the physical safety of the resident or other residents” and, except under emergency circumstances, only with a physician’s order that specifies precisely when and how restraints are to be applied. Restraints specifically are not to be used for discipline or convenience. In addition, and perhaps most importantly, restraints can only be applied with the informed consent of the resident or (more likely) the resident’s representative. Prior to consent being sought, the nursing home must explain the potential negative consequences of physical restraints. These potential consequences include but are not limited to “declines in the resident’s physical functioning (e.g., ability to ambulate) and muscle condition, contractures, increased incidence of infections and development of pressure sores/ulcers, delirium, agitation, and incontinence.”

One of the success stories in nursing home care has been the diminishing use of restraints over the past fifteen years. This reduction has been due part to the influence of the Nursing Home Reform Law, and part to medical literature documenting the counterproductiveness of restraint use.

Results

In accord with these trends, the examined admission agreements generally dealt with restraints fairly. Only 5 percent of the admission agreements had a resident waive the nursing home’s liability for the use of restraints.

Given nursing homes’ broad compliance in this area, it is appropriate for this report to focus on compliant admission agreements. In most cases, compliance meant not addressing restraints one way or the other. One admission agreement, however, went further, listing the limited circumstances under which restraints would be appropriate, and having the resident acknowledge that she understood the rules for the use of restraints. (Exhibit 7) Similarly, another admission agreement accurately explained restraint rules and described restraint use as a “last resort.” (Exhibit 5)

Another admission agreement combined a reasonably accurate discussion of restraint-related law with a wholly inappropriate waiver of liability. The agreement had the signatory “acknowledge and accept the risk that the Resident may fall and be injured or die as a result of falling while a Resident of the facility.” (Exhibit 21) This report discusses such waivers of liability on pages 14-16.

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<th>Limits Liability for Use of Restraints</th>
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Waiving Nursing Home’s Liability for Physicians’ Actions

Relevant Law

As discussed above, it is never in a resident’s interests to waive a nursing home’s liability. A nursing home should be responsible for its negligent actions. This is true even if the waiver pertains to the nursing home’s responsibility for the actions of the resident’s physician.

In many cases, of course, the facts likely will show that the nursing home is not responsible for the physician’s actions, since the physician generally will not be the nursing home’s employee or agent. In some cases, however, it may be appropriate to hold a nursing home liable for physician’s actions, particularly when the resident’s physician serves as the nursing home’s medical director or has another business relationship with the nursing home. As has been discussed in this report in regard to several other issues, a nursing home’s liability should be determined by the facts and the law, rather than by an admission agreement provision that the resident probably never even read.

Results

Twenty-two percent of the nursing homes had an incoming resident release the nursing home from at least some responsibility for physician actions. Typical language had the resident acknowledge all physicians as independent contractors, and further acknowledge “that the Facility’s liability for any physician’s act or omission is limited.” (Exhibit 22) Actually, this may or may not be true, depending on the circumstances, so it is improper for an admission agreement to simply state limited liability as a fact.

| Limits Liability for Physician Actions |
|-------------------------------|----------------|
| Yes                           | 22%            |
| No                            | 75%            |
| None of the Above             | 4% *           |

* Totals to more than 100% due to rounding.

Waiving Nursing Home’s Liability for Failure to Obtain Third-Party Payment

Relevant Law

The Nursing Home Reform Law requires a nursing home to “provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.” Accompanying federal guidelines explain that such social services include “[a]ssisting residents with financial and legal matters.”

Indeed, nursing homes frequently take steps to arrange for payment by the Medicare and Medicaid programs, and by private insurance companies. For example, a nursing home often will help a resident submit the documents necessary to establish his financial eligibility for Medicaid. In addition, a nursing home almost always must submit the medical records needed to establish a resident’s medical eligibility for third-party payments – after all, the nursing home has the easiest access to the resident’s current medical records.

This is not to say that nursing homes have exclusive or even primary responsibility for a resident’s eligibility for Medicare, Medicaid, or private insurance. The ultimate responsibility rests with a resident or a resident’s representative. If, however, a nursing home takes on a role in a resident’s application for eligibility, the nursing home must perform those duties adequately.
Here again, waivers of liability are inappropriate. A nursing home’s liability should be determined by the facts and the law, not by an admission agreement provision that the resident likely never read.

**Results**

Sixteen percent of the examined admission agreements purported to waive a nursing home’s responsibility for third-party payment. Several admission agreements fairly stated that the nursing home could not guarantee payment by Medicare, Medicaid, or other third-party payor, but then went on to improperly release the nursing home from liability with the following language: “The Facility, its agents and associates are hereby released from any liability or responsibility for the Resident’s potential claim for any failure to obtain such coverage.” (Exhibit 23) As is true in virtually all of the liability waivers discussed in this report, this statement errs by sweeping too broadly. Although as a practical matter, a nursing home often would not be accountable for a resident’s failure to obtain eligibility for third-party payment, there are times when a nursing home should be responsible. Residents and family members are sometimes told by staff, “we’ll take care of it,” only to find out later than the staff has not carried through. When staff members claim to take responsibility but then let the matter drop, for example, the nursing home undoubtedly should be responsible for any delay or denial.

One noteworthy admission agreement described the situation rather fairly – not releasing the nursing home from liability, but instead pointing out that the nursing home could not guarantee third-party payment, and that the nursing home’s assistance in obtaining payment did not eliminate the resident’s overarching obligation to pay for services rendered:

> While [the nursing home] may assist in the procurement of third-party payor coverage, including Medicaid, Medicare and other insurance coverage, for the cost of residency and treatment, the resident and his/her legal representative acknowledge that [the nursing home] does not guarantee coverage or the amount of payment by any payor source. The resident acknowledges that assistance by [the nursing home] does not alter his/her responsibility to satisfy debts incurred for services rendered.
> (Exhibit 8)

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* Totals to less than 100% due to rounding.
Requiring Arbitration of Disputes

Relevant Law

Arbitration is a form of alternative dispute resolution in which the rulings are made not by a judge or jury, but by a private arbitrator. The arbitrator generally is an attorney who works for or with an arbitration service. The arbitrator is paid by the parties to the arbitration. The arbitrator’s decision is generally final, although some limited review by a court may be available.

Arbitration often is considered disadvantageous for consumers, who generally prefer trial by jury. The right to a jury trial is granted by the Seventh Amendment to the United States Constitution, and jury trial is considered an important way in which the will of the people is expressed and protected.

By contrast, there is a real possibility that an arbitrator will have an inclination (conscious or otherwise) to side with a business against a consumer, since the business may be in a position to give repeat business to the arbitrator and arbitration service. Also, arbitrators’ backgrounds often give them a predisposition to side with business. Arbitrators are frequently attorneys, and so generally do not offer the type of societal cross-section is the hallmark of the right to jury trial.

Arbitration can be done only with the agreement of both parties to the dispute. In looking at arbitration agreements, it is important to note whether the agreement was entered into before or after the dispute arose. There is generally little concern with post-dispute agreements in which the parties (or, more likely, the parties’ attorneys) decide to arbitrate a known dispute, with full knowledge of what is at issue.

On the other hand, pre-dispute arbitration agreements are objectionable. These agreements generally are made as part of an initial contract prepared by a business for signature by a consumer, broadly referring future disputes to arbitration. The consumer likely signs the agreement while paying little or no attention to the arbitration provisions.

Nursing home admission agreements are a good example. During the admissions process, neither residents nor their families are thinking of how to resolve future disputes with the nursing home. Their focus is on more immediate and tangible concerns – the physical and emotional aftermath of an unexpected stroke, for example, or a family’s grief over a mother’s need for nursing home care.

Health care often is recognized as an inappropriate setting for pre-dispute arbitration agreements. Both the American Arbitration Association and the American Health Lawyers Association do not provide arbitrators under pre-dispute arbitration agreements for health care disputes unless ordered by a court to do so. In announcing this policy, the American Arbitration Association stated: “Although we support and administer pre-dispute arbitration in other case areas, we thought it appropriate to change our policy in these cases since medical problems can be life or death situations and require special consideration.”

The enforcement of arbitration agreements is supported by the Federal Arbitration Act. Consumer advocates argue that the Federal Arbitration Act should be interpreted to apply to business-to-business arbitration agreements and not to business-to-consumer agreements, but this argument has not been adopted by the courts.

In general, the Federal Arbitration Act applies to any arbitration agreement that involves interstate commerce. Across the country, the majority of courts have found that nursing home admission agreements involve interstate commerce, due to the many state-to-state transactions involved in the operation of a nursing home.
Missouri law requires that arbitration agreements include a notice that reads substantially as follows: “THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.”\(^42\) This requirement, however, has been held to be preempted by the Federal Arbitration Act and thus not enforceable in any agreement involving interstate commerce.\(^43\)

Preemption does not apply, however, to generally-applicable provisions of state law, \textit{i.e.,} provisions of state law that are not focused on arbitration. Accordingly, “generally applicable state law contract defenses, such as fraud, duress and unconscionability, may be used to invalidate arbitration agreements without contravening the [Federal Arbitration Act].”\(^44\)

In Missouri, as in many other states, a contract can be found unconscionable if the contract’s terms are unfair, and the circumstances of the contracting process had not given the disadvantaged party an adequate opportunity to negotiate a fair agreement. The Missouri Court of Appeals explains:

\begin{quote}
It is suggested that there are procedural and substantive aspects of unconscionability, the former relating to the formalities of the making of the contract and the latter to the specific contract terms. Procedural unconscionability in general is involved with the contract formation process, and focuses on high pressure exerted on the parties, fine print of the contract, misrepresentation, or unequal bargaining position. By substantive unconscionability is meant an undue harshness in the contract terms themselves. Generally there must be both procedural and also substantive unconscionability before a contract or a clause can be voided. Furthermore, it has been suggested that there be a balancing between the substantive and procedural aspects, and that if there exists gross procedural unconscionability then not much be needed by way of substantive unconscionability, and that the same “sliding scale” be applied if there be great substantive unconscionability but little procedural unconscionability.\(^45\)
\end{quote}

An arbitration agreement thus is unenforceable if its terms, along with the circumstances of its signing, demonstrate an adequate level of substantive and procedural unconscionability.

\textbf{Results}

Eighteen percent of the examined admission agreements required arbitration as a condition of admission. Another 4 percent of the agreements offered arbitration as a purportedly voluntary option. These numbers likely understate the prevalence of arbitration agreements, since an arbitration agreement could be a document separate from the admission agreement itself.

One arbitration agreement provided for arbitration for all claims other than “monetary claims involving less than \$25,000.” (Exhibit 24 (emphasis in original)) In practice, this would mean that a resident’s claim against the nursing home would be subject to arbitration, but the nursing home’s claim against the resident probably would not be, since any claim by the nursing home likely would be related to a payment dispute involving less than \$25,000, whereas a resident’s claim likely would be a personal injury claim involving more than \$25,000.

\begin{center}
\begin{tabular}{|l|c|}
\hline
\textbf{Arbitration} & \textbf{\%} \\
\hline
Required & 18 \% \\
Voluntary & 4 \% \\
Not Mentioned & 75 \% \\
None of the above & 3 \% \\
\hline
\end{tabular}
\end{center}
AGREEMENTS IMPROPERLY LIMITING RESIDENT’S RIGHT TO REMAIN IN, OR RETURN TO, NURSING HOME

Authorizing Evictions

Relevant Law

Nursing home law is premised on the philosophy that a nursing home should be “home” for residents to the extent possible. Accordingly, the Nursing Home Reform Law limits a nursing home’s right to force out a resident – no residence can truly be a home if the person living there can be forced out at the property owner’s whim.

Involuntary transfer or discharge is allowed only for one of six reasons. Nonpayment is one reason; a second reason is the nursing home going out of business.46

The other four reasons all are based on the resident’s health or behavior. Involuntary transfer/discharge is allowed if the resident no longer requires nursing home care (reason #3) or requires a level of care that cannot be provided in a nursing home (#4). The final two reasons are based on the protection of others in the nursing home – a resident can be transferred or discharged involuntarily if his presence endangers others’ health (#5) or safety (#6).47

Results

In the examined admission agreements, 17 percent of the nursing homes claimed the right to terminate a resident’s stay without a reason. One of these admission agreements also had the resident’s representative agree to accept custody of the resident after a termination:

Either party may, without cause, terminate this agreement on 30 day written notice. … The legal guardian or responsible party shall, upon termination hereof, subsequent to the notice provided for in Paragraph 7 be responsible for and accept custody of the resident.

[Paragraph 7] … Part of the consideration for entering into this agreement is the agreement of the legal guardian, in his capacity as legal guardian, and the responsible party, in his individual capacity, to be responsible for and accept the custody of the resident if required by the facility.

(Exhibit 25)

More commonly, the admission agreements acknowledged that the nursing home could transfer/discharge a resident against the resident’s will only under certain circumstances. This high percentage, however, was undercut somewhat by the frequency in which the “certain circumstances” were not listed accurately. Of the nursing homes that listed reasons for an involuntary transfer/discharge, 46 percent included at least one reason not allowed by the Reform Law.

One admission agreement gave the nursing home virtual carte blanche to transfer or discharge, stating that the nursing home’s administrator “shall have the right to remove any Resident from [the nursing home], after appropriate notice, when in her judgment it is in the best

Eviction Allowed Without Cause

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<td>Yes</td>
<td>17%</td>
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<tr>
<td>No</td>
<td>77%</td>
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<td>None of the Above</td>
<td>6%</td>
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</table>
interest of the other Residents, [and] for medical reasons as defined by [the nursing home] or [the nursing home’s] physician.” (Exhibit 26) Similarly, another admission agreement broadly authorized transfer/discharge “due to mental [or] physical conditions.” (Exhibit 27)

In another example of noncompliance, an admission agreement authorized transfer or discharge upon only ten days written notice, and then set forth a laundry list of justifications for transfer/discharge. One of the agreement’s improper justifications allowed transfer/discharge of a resident for being “unduly disturbing, unduly noisy, objectionably untidy, noncooperative or destructive in behavior and action.” (Exhibit 28) In a similar vein, another admission agreement authorized transfer/discharge for a resident being “uncooperative or destructive to people or facility.” (Exhibit 29) A third admission agreement broadly authorized involuntary transfer for any resident “becom[ing] uncoopera-

tive or unmanageable.” (Exhibit 30)

Such justifications are objectionable both because they go far beyond the justifications allowed by the Reform Law, and also because they are inconsistent with nursing home reality. In fact, nursing home residents often are disturbing, untidy, uncooperative or destructive. They can’t help it – this type of behavior frequently results from Alzheimer’s disease and other dementias, which are common among nursing home residents. When presented with such behavior, a nursing home should not transfer or discharge the resident – instead, the nursing home should assess the resident’s condition and develop a care plan that addresses the resident’s needs as best as possible.

Also, these types of authorizations are much too open-ended and, as a result, are subject to manipulation by a nursing home that for whatever reason is searching for a reason to evict a resident. For example, what does it mean to say that a resident is “unduly disturbing, unduly noisy, [or] objectionably untidy”? This language could be used to attempt eviction of a resident who (for example) likes to watch late-night television or keeps a stack of magazines by his bed.

Missouri law authorizes involuntary transfer or discharge “for medical reasons or for [the resident’s] welfare or that of other residents, or for nonpayment for his stay.” These are the standards that govern involuntary transfers and discharges in nursing homes that do not accept reimbursement from Medicare or Medicaid. In the nursing homes that accept federal standards, however, the transfer/discharge standards of the Nursing Home Reform Law apply, since the federal standards are stricter than the standards in Missouri law. Nonetheless, some admission agreements used the Missouri-law standards even though those nursing homes accepted federal reimbursement and thus were governed by the Nursing Home Reform Law. (Exhibit 20)

### Authorizes Eviction for Improper Reason

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>46%</td>
</tr>
<tr>
<td>No</td>
<td>42%</td>
</tr>
<tr>
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<td>12%</td>
</tr>
</tbody>
</table>

### Notifying of Transfer/Discharge Procedures

#### Relevant Law

The Nursing Home Reform Law requires certain procedures to give residents a fair opportunity to appeal an involuntary transfer or discharge. First, a nursing home must give advance written notice, generally at least thirty days before the planned transfer/discharge. If the resident
disagrees with the proposed transfer/discharge, she can request an administrative hearing through a process mandated by the Reform Law.\(^{49}\)

**Results**

<table>
<thead>
<tr>
<th>Notice Before Discharge</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mentions Right</td>
<td>51%</td>
</tr>
<tr>
<td>Does Not Mention Right</td>
<td>32%</td>
</tr>
<tr>
<td>Disclaims Right</td>
<td>9%</td>
</tr>
<tr>
<td>None of the Above</td>
<td>8%</td>
</tr>
</tbody>
</table>

In general, the admission agreements did not run afoul of the Reform Law’s provisions regarding transfer/discharge procedures. Only nine percent of the admission agreements explicitly disclaimed a resident’s right to receive a notice of an involuntary transfer/discharge – in the other 91 percent of the admission agreements, the transfer/discharge notice was either explained or not mentioned. Of course, nothing in federal or state law requires that a transfer/discharge notice be mentioned in an admission agreement, so an admission agreement’s omission of this topic is entirely legal.

<table>
<thead>
<tr>
<th>Right to Appeal Discharge</th>
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</thead>
<tbody>
<tr>
<td>Mentions Right</td>
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</tr>
<tr>
<td>Does Not Mention Right</td>
<td>79%</td>
</tr>
<tr>
<td>Disclaims Right</td>
<td>0%</td>
</tr>
<tr>
<td>None of the Above</td>
<td>2%</td>
</tr>
</tbody>
</table>

Regarding a resident’s appeal rights, none of the admission agreements disclaimed the right to appeal, and an additional nineteen percent of the admission agreements explicitly mentioned a resident’s right to appeal.

**Limiting Rights to Bed Holds and Readmissions**

**Relevant Law**

Because a nursing home is understood to be the resident’s home, the resident’s place in the nursing home is protected to a certain extent whenever he is moved to an acute care hospital. Under Missouri Medicaid rules, the Medicaid program will pay to hold a nursing home bed while the resident is hospitalized, but only for up to three days, and only if the Medicaid-certified section of the nursing home had been at least 97 percent occupied during the previous calendar quarter.\(^{50}\)

In addition, the federal Nursing Home Reform Law provides a readmission right that, while it does not hold a specific bed, protects the resident’s ability to at least return from the hospital to the same nursing home. Specifically, a nursing home must offer readmission to the next available bed if the hospitalized resident is Medicaid-eligible and continues to need nursing home services. This provision of the Reform Law strikes a balance between the interests of the resident, the nursing home, and the Medicaid program. Following a hospitalization, a Medicaid-eligible resident likely would have difficulty finding a place in a new nursing home, since the Medicaid reimbursement rate generally is lower than nursing homes’ private-pay rates. On the other hand, it does not make sense for a nursing home to hold a bed indefinitely, or for the Medicaid program.
to pay for an extended bed hold. It *does* make sense, however, to require a nursing home to offer an available bed to a (former) resident when his hospitalization has ended.

A nursing home must notify a resident of his rights to hold a bed with Medicaid reimbursement, or to be readmitted to an available bed following hospitalization. As a practical matter, nursing homes giving this advance notice generally provide the notice as part of the admission agreement. In addition, the same notification must be made a second time – whenever a resident is being transferred to the hospital.

**Results**

Of the examined admission agreements, 32 percent of the agreements provided notification of a resident’s bed hold right. 46 percent of the agreements did not mention the bed hold right, while an additional 11 percent of the admission agreements disclaimed a bed hold right.

The right to readmission was more likely to ignored entirely – 65 percent of the admission agreements said nothing about the federal readmission right. Twenty-five percent of the admission agreements acknowledged the right to readmission, while 4 percent of the admission agreements disclaimed any right to be readmitted.

One agreement explained accurately that “[a]ny Medicaid residents, who do not wish to hold this bed, will be eligible for the next available bed at no charge.” (Exhibit 18 (emphasis in original)) Similarly, another admission agreement explained that a “Medicaid resident shall have the right to return to the first available, appropriate, semi-private bed in the Facility.” (Exhibit 31) A third admission agreement closely tracked the language from federal law, explaining that “the Resident shall be readmitted upon the first availability of a bed in a non-private room as long as the Resident: (1) requires the services provided by the Facility; and (2) is eligible for Medicaid nursing services.” (Exhibit 32)

A few admission agreements went beyond the requirements of the Nursing Home Reform Law, offering readmission to the next available bed to any hospitalized resident, regardless of the resident’s reimbursement source. (See, e.g., Exhibit 33)
Authorizing Transfer Within Nursing Home

Relevant Law

Under the Nursing Home Reform Law, a resident can refuse a transfer within the nursing home if the purpose of the transfer is to move the resident out of a bed certified for Medicare payment. This right of refusal counterbalances Medicare reimbursement rules that give nursing homes an incentive to shuttle residents in and then out of Medicare-certified beds. The Medicare program pays a relatively high reimbursement rate, but will pay for nursing home care for no more than the first 100 days of a resident’s stay, and then only when the resident requires daily specialized services provided by a nurse or licensed therapist. Furthermore, the Medicare program will pay only if the resident occupies a bed certified for Medicare reimbursement. If, as is often the case, a nursing home certifies only a limited number of its beds for Medicare reimbursement, the nursing home maximizes its reimbursement potential by removing residents from Medicare-certified beds as soon as their Medicare reimbursement concludes.

A resident may have a good reason to refuse transfer from a Medicare-certified bed. As discussed in the preceding paragraph, a resident can receive Medicare-reimbursed care under Part A only if she requires and receives daily specialized services from a nurse or licensed therapist. Also, Medicare payment is possible only if, prior to entering the nursing home, the resident was hospitalized for at least three nights. Obviously, such a resident does not recuperate instantaneously at the expiration of her Medicare-funded care. Oftentimes she can benefit from remaining longer in the nursing home’s Medicare-certified area, which often has a special focus on providing specialized therapy and nursing services.

Results

The vast majority of admission agreements – approximately 84 percent — did not address this issue one way or the other. Three percent of the agreements explicitly acknowledged a resident’s right to refuse a transfer from a Medicare-certified bed, while another three percent of the agreements disclaimed such a right. Approximately ten percent of the agreements could not be placed in any one category.

One admission agreement improperly claimed that an entering resident would be asked to leave when her Medicare reimbursement had ended: “If you are being placed in a portion of the building which is a certified skilled area, these beds are intended for temporary placement and you may be asked to move to a non-certified area of the building when your level of care no longer necessitates remaining in that area.” (Exhibit 34 (emphasis in original)) Attached to that admission agreement was a corresponding “Notice of Temporary Placement” with almost identical language. The Notice confusingly had the resident “agree to move to a room in a non-certified area when upon review you no longer meet the Medicare skilled criteria for coverage,” but

*If, on the other hand, all of a nursing home’s beds are Medicare certified, intra-facility transfers will not be motivated by Medicare considerations. Complete certification is becoming more common. Prior to 2002, a nursing home’s Medicare rate was based at least in part on its Medicare-related costs, and many nursing homes attempted to maximize their reimbursement rates by creating small Medicare-certified units with high per-resident costs. Now, however, Medicare rates are not facility-specific, so nursing homes are more likely to certify a greater number of their beds for Medicare reimbursement. See 42 U.S.C. § 1395yy(c).
also granted a right to appeal. (Exhibit 34) It is unclear how this right to appeal might play out in practice. As discussed above, a resident does not have just a right to appeal, but instead has the absolute right to refuse a transfer intended to move her from a Medicare-certified bed.

In one agreement, a resident purportedly had the right to remain in a Medicare-certified bed – but only if she paid the Medicare rate rather than the private pay rate. As a practical matter, this is improper: it is equivalent to requiring transfer from the Medicare-certified bed. The resident will not pay the Medicare rate, which generally is significantly higher than the nursing home’s typical daily rate. (Exhibit 35)

Several agreements broadly granted the nursing home the right to transfer the resident within the nursing home, by stating: “The Facility reserves the right of room and roommate transfer at its discretion and consistent with the health and welfare of Resident, provided that any notice required by law shall be given to Resident.” (Exhibit 36) Similarly, another admission agreement stated that “[t]he Administrator reserves the right to transfer [the resident] to a room other than the one initially assigned, … if necessary. (Exhibit 37) While these agreements were classified, in an abundance of caution, as “does not mention,” the quoted language certainly would give residents and their family members the mistaken impression that the nursing home had the right to move the resident from a Medicare-certified bed at the conclusion of her Medicare-reimbursed care.

**AGREEMENTS AUTHORIZING IMPROPER ACCESS BY NURSING HOME TO MONEY OF RESIDENTS, FAMILY MEMBERS AND FRIENDS**

**Authorizing Direct Deposit of Resident’s Income to Nursing Home**

**Relevant Law**

Under the Nursing Home Reform Law, a nursing home “may not require residents to deposit their personal funds with the facility.” Missouri law similarly prohibits a nursing home from managing a resident’s money unless written authorization is given by the resident or the resident’s representative. Under both the Reform Law and Missouri law, if a nursing home handles a resident’s money, the money must be kept in an account separate from the nursing home’s funds. The overall impact of these laws is that a resident can choose to have the nursing home handle his money and, if the resident makes that choice, the nursing home must act with bank-like fairness.

**Results**

Regardless, eight percent of the admission agreements obligated a resident to a certain extent to have his income directly deposited to the nursing home. For example, one admission agreement had the resident “authorize Facility to request and be named Payor on my Social Security checks.” (Exhibit 38) Another admission agreement had the resident “assign all rights of such of
my income from whatever source derived, as it exists now or as it may exist in the future, to the Nursing Facility as is necessary for payment of all charges incurred relating to my care.” (Exhibit 39) A third admission agreement made a similar assignment in more sweeping language:

This Agreement shall operate as an assignment, transfer, and conveyance to the Facility of so much of Resident’s Property as is equal to any outstanding unpaid obligations of the Resident based on this Agreement. This assignment shall be an obligation of the Resident’s estate and may be enforced against the Resident’s estate. This assignment shall apply whether or not the Resident is occupying the Facility at the time of death.

(Exhibit 40)

In defending such income assignments, nursing home representatives likely would argue that an assignment gives a nursing home no more than the payment to which it is entitled. At times, residents or (more frequently) their family member/agents simply refuse to pay for nursing home services. In such situations, the nursing home representatives would argue, an income assignment enables nursing homes to get paid for their services.

For two reasons, this argument is off-base. The first reason is simple – as explained above, federal and state law prohibits a nursing home from requiring a resident to deposit personal funds with the nursing home.

The second reason comes from the reasoning behind the law. As much as is possible, the resident (or the resident’s representative) should control the resident’s life. The resident may be dependent upon the nursing home for a broad range of services, but this dependence should not give the nursing home any automatic right to control the resident’s finances.

Like any creditor, a nursing home can collect money owed without having automatic access to the customer’s income. Under the Nursing Home Reform Law, a nursing home can evict a resident for failure to pay a bill. Also, like any other creditor, a nursing home can file a court action to collect on a past-due bill. Collection certainly would be easier if the nursing home had automatic access to a resident’s income, but ease of collection is a double-edged sword– the nursing home would be able to collect appropriate or inappropriate amounts with almost equal ease.

### Nursing Home With Direct Access to Resident’s Income

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
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<td>Requires</td>
<td>8%</td>
</tr>
<tr>
<td>Does Not Require</td>
<td>89%</td>
</tr>
<tr>
<td>None of the Above</td>
<td>3%</td>
</tr>
</tbody>
</table>

Requiring or Soliciting Financial Guarantees, Despite Federal Law to the Contrary

Relevant Law

Under the Nursing Home Reform Law, a nursing home cannot require a resident’s family member or friend to become financially liable for nursing home expenses. In other words, a nursing home cannot require a financially-liable co-signer on an admission agreement.

A no-guarantee rule makes sense in nursing home admissions because nursing home expenses are not limited to any particular amount, and because the Medicaid program steps in when a resident has inadequate financial resources. Compare a car sale on credit to a nursing
home admission. Requiring a financially-liable co-signer is appropriate in the car sale because the co-signer’s liability is limited to the car’s sale price, and the seller needs protection in case the buyer is unable to pay. In a nursing home admission, on the other hand, the potential liability is not limited to any particular amount—it could be $1,000, $10,000 or $100,000, depending on the length of the resident’s stay. Also, the nursing home already is protected—if the resident’s savings drop to a level at which she cannot pay nursing home expenses, the Medicaid program can provide the necessary assistance.

Like other provisions of the Nursing Home Reform Law, the no-guarantee law applies to all residents of any nursing home that accepts Medicare and/or Medicaid. Thus, if a nursing home accepts either Medicare or Medicaid, this law applies whether a particular resident is eligible for Medicare or Medicaid payment, or pays personally for her nursing home care.

In an effort to evade the no-guarantee law, nursing homes have used admission agreements in which a family member or friend supposedly “volunteers” to become financially liable. Typically, the family member or friend has signed as a “responsible party,” likely believing that she has agreed only to be a representative or contact person. In these agreements, however, a paragraph in the middle of the admission agreement generally has defined “responsible party” as a person who has volunteered to become liable for all nursing home expenses. Nursing homes have claimed that these guarantee agreements are legal, arguing that although the Reform Law prohibits a nursing home from requiring a financial guarantee, it does not prevent a nursing home from accepting a voluntary guarantee.

For at least three reasons, such “voluntary” guarantees are improper. First, the admission agreement and the term “responsible party” can be deceptive, because they might give the family member or friend the impression that a “responsible party” is only a representative or contact person. As a result, a family member or friend might sign as “responsible party” without understanding that she purportedly is becoming financially liable for all nursing home bills. Such a misunderstanding is likely given the admission agreements’ length and, within those agreements, the distance between the “responsible party” description and the corresponding signature line.

Second, admission agreements with supposedly “voluntary” guarantees are often used to require guarantors. It is easy for a nursing home staff member to tell a family member or friend that she must sign as “responsible party,” even if the guarantee provision is written as being voluntary. Given the public’s profound unfamiliarity with nursing home law, and the traumatic circumstances generally surrounding nursing home admissions, a family member or friend likely would obey and sign as “responsible party.”

Third and finally, a supposedly “voluntary” guarantee is unenforceable because it provides no benefit to either a resident or a “responsible party.” A “responsible party” signature has no effect on a resident’s admission; as explained above, the Nursing Home Reform Law prohibits a nursing home from requiring a guarantee as a condition of admission. Such a gratuitous promise, benefiting neither the resident nor the “responsible party,” is not enforceable “if the slightest circumstance of fraud, duress, mistake, or undue influence is present.” Nursing home admissions are situations in which fraud, duress, mistake, and undue influence can easily occur, and thus a “voluntary” promise to be responsible for nursing home expenses would likely not be enforced.

This result—that a “voluntary” guarantee agreement is unenforceable and improper—comports with common sense. It is difficult to imagine a more one-sided agreement. It would be
unfair to make a family member or friend liable based on an admission agreement provision that gave no benefit to the resident or to the resident’s family member or friend.

**Results**

Nineteen percent of the admission agreements required a financial guarantee, in direct violation of the Nursing Home Reform Law. For example, one admission agreement seemed to be written specifically to impose financial responsibility upon a family member or friend – the agreement had a “Responsible Party” agreeing “[t]o be fully responsible for all financial obligations incurred by Resident,” without any similar promise by the resident. (Exhibit 11) More frequently, financial liability was imposed on both a resident and a family member or friend – either through a joint promise by the resident and “responsible party” to pay all nursing home expenses (Exhibit 20) or by a guarantee by the resident’s representative to pay all amounts owed by the resident to the nursing home. (Exhibit 12)

<table>
<thead>
<tr>
<th>Financial Guarantors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requires Guarantor</td>
</tr>
<tr>
<td>Requires Guarantor Unless Resident Is Medicaid-Eligible</td>
</tr>
<tr>
<td>Solicits But Does Not Require Guarantor</td>
</tr>
<tr>
<td>Does Not Require or Solicit Guarantor</td>
</tr>
<tr>
<td>None of the Above</td>
</tr>
</tbody>
</table>

Thirty percent of the agreements solicited, but did not require, a financial guarantee. As explained above, these one-sided, purportedly “voluntary” agreements would likely be unenforceable.

One admission agreement gave the resident and family member a choice. The resident could assign her income to the nursing home, which is improper as explained on pages 28-29 of this report. As an alternative, the “Patient Representative” could “personally guarantee all obligations of the Patient under this Agreement, including but not limited to the payment of all charges billed by the Nursing Facility relating to the care of the Patient.” (Exhibit 39)

Several of the admission agreements were ambiguous or confusing as to whether a resident’s family member or friend was personally liable for nursing home expenses, or was responsible only to make payment from the resident’s money. For example, one admission agreement defined a “Responsible Party” as an “individual who voluntarily agrees to become obligated for the care and treatment of the Resident,” and went on to specify that “[s]uch person is bound by the terms of this Agreement.” The following sentence, however, focused on the Responsible Party making payment from the resident’s funds: “If said person has access to the Resident’s funds and assets then [the] person is obligated to pay the terms of services and supplies from such funds and assets.” The following page, furthermore, explicitly stated that a Responsible Party was “not personally liable for the Resident’s account from any funds other than the Resident[’]s.” (Exhibit 41)
Similarly, in another admission agreement, a “Financial Agreement” attachment referred to persons “with legal access to the resident’s income stream or financial resources available for use to pay for services rendered,” but imposed a broad obligation to pay on any “designated or responsible party,” without limiting the obligation to payment from the resident’s funds. (Exhibit 42)

### Limiting Use of Medicaid Reimbursement

**Relevant Law**

Prior to the enactment of the Nursing Home Reform Law, nursing homes often required an entering resident to promise that she would not use Medicaid reimbursement for a certain number of months or years. Such a “duration of stay” agreement gave the nursing home a guarantee of reimbursement at the private-pay rate, which is higher than or equal to the Medicaid rate.66

Now, the Nursing Home Reform Law prohibits duration of stay agreements. The law broadly prohibits a nursing home from requiring any waiver of a resident’s rights to reimbursement under Medicaid and/or Medicare.67

**Results**

The vast majority of admission agreements were in compliance with this requirement. (See box.) Several admission agreements stated the law accurately and clearly: “The Facility does not require you to remain in private pay status for any period of time.” (Exhibit 43)

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<thead>
<tr>
<th>Resident Promises Not to Use Medicaid Reimbursement for Certain Period of Time</th>
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<tbody>
<tr>
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<td>No</td>
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* Totals to more than 100% due to rounding.
Concluding Thoughts

This report’s findings show that Missouri consumers should not take anything for granted. A nursing home admission agreement may or may not be consistent with relevant law, and frequently will contain provisions that disadvantage residents and their families.

Accompanying this report is a guide for residents and families entitled *Nursing Home Admission Agreements: Think Twice Before Signing*. The guide is available for free download from the National Senior Citizens Law Center at www.nsclc.org. The guide explains how consumers can contest admission agreement provisions that are inconsistent with law or otherwise improper, whether the provisions are discovered prior to admission or afterwards. In some circumstances, lawsuits may be brought to challenge admission agreement provisions that are inconsistent with law. The guide lists strategies and resources available to consumers.

Legislative action may also be appropriate. For example, after a report revealed numerous problems in Los Angeles County nursing home admission agreements, California law was amended to require the state’s nursing homes to use a standard admission agreement.68

Ultimately, it is counterproductive for nursing homes to ignore, misrepresent, or disclaim relevant standards. Better nursing homes today pursue a “culture change” in which resident needs and preferences are given high priority. An improved culture will require honest, cooperative relationships between nursing homes, residents and family members. An important step in developing such a culture would be for nursing homes to acknowledge and follow relevant provisions of the Nursing Home Reform Law.
ENDENOTES


3 See Institute of Medicine, Improving the Quality of Care in Nursing Homes (1986).

4 42 U.S.C. §§ 1395i-3(b)(2), (3), 1396r(b)(2), (3).


6 42 U.S.C. §§ 1395i-3(b)(2), 1396r(b)(2).

7 42 U.S.C. §§ 1395i-3(c)(3)(B), 1396r(c)(3)(B).

8 See, e.g., People v. McKale, 159 Cal. Rptr. 811, 815-16 (Cal. Ct. App. 1979) (consumers likely to believe that business has authority to enforce contract terms, regardless of illegality of terms).

9 Bet Tzedek Legal Services, “‘If Only I Had Known’: Misrepresentations by Nursing Homes Which Deprive Residents of Legal Protection” (1995); 1997 Cal. Stat., c. 631.

10 42 U.S.C. §§ 1395i-3(b)(2), 1396r(b)(2); see also 42 C.F.R. § 483.20(k) (corresponding requirement in Reform Law’s regulations).

11 42 C.F.R. § 483.25(d).

12 42 C.F.R. § 483.25(c); see generally 42 C.F.R. § 483.25.

13 See, e.g., 42 U.S.C. §§ 1395i-3(b)(2), 1396r(b)(2) (care plan requirement in Nursing Home Reform Law); 42 C.F.R. § 483.20(k) (corresponding requirement in Reform Law’s regulations).

14 See, e.g., HHS Office of Inspector General, Emerging Practices in Nursing Homes, OEI-01-04-00070 (March 2005); Culture Change In Long-Term Care, J. Soc. Work In Long-Term Care, vol. 2, issues 1-4 (2003) (all four issues devoted to articles concerning culture change).

15 42 U.S.C. §§ 1395i-3(b)(2), 1396r(b)(2); 42 C.F.R. § 483.20(k).

16 42 U.S.C. §§ 1395i-3(b)(2), 1396r(b)(2); see also 42 C.F.R. § 483.20(k) (corresponding requirement in Reform Law’s regulations).

17 42 U.S.C. § 1396r(c)(5)(A)(iii) (Medicaid); 42 C.F.R. §§ 447.15, 483.12(d)(3) (same), 489.30 (Medicare).


19 42 U.S.C. §§ 1395i-3(c)(3)(B), 1396r(c)(3)(B); 42 C.F.R. § 483.10(j)(iv).


23 42 C.F.R. § 483.13(c).
24 42 C.F.R. § 483.13(c)(3).
25 42 C.F.R. § 483.13(c)(2).
26 See, e.g., 42 U.S.C. §§ 1395i-3(b)(3)(C)(i), 1396r(b)(3)(C)(i) (assessments at admission, and annually thereafter); 42 C.F.R. § 483.20(b)(2) (same).
27 42 U.S.C. §§ 1395i-3(b)(2), 1396r(b)(2) (care plans following initial assessments); 42 C.F.R. § 483.20(k)(2)(i) (same).
28 42 U.S.C. §§ 1395i-3(c)(1)(A)(ii), 1396r(c)(1)(A)(ii); see 42 C.F.R. § 483.13(a).
29 42 U.S.C. §§ 1395i-3(c)(1)(A)(ii), 1396r(c)(1)(A)(ii); see 42 C.F.R. § 483.13(a).
33 See 42 C.F.R. § 483.75(i)(1) (regulation from Nursing Home Reform Law, requiring each nursing home to designate a physician as medical director).
37 Bunge Corp. v. Perryville Feed & Produce, Inc., 685 S.W.2d 837 (Mo. 1985).
40 42 U.S.C. §§ 1395i-3(c)(2)(A), 1396r(c)(2)(A).
41 42 U.S.C. §§ 1395i-3(c)(2)(A), 1396r(c)(2)(A).
49 42 U.S.C. §§ 1395i-3(c)(2)(B), 1396r(c)(2)(B).
50 Missouri Medicaid Nursing Home Manual 13.13.C.
51 42 U.S.C. § 1396r(c)(2)(D)(i); 42 C.F.R. § 483.12(b)(1).
52 42 U.S.C. § 1396r(c)(2)(D)(ii); 42 C.F.R. § 483.12(b)(2).
53 42 U.S.C. § 1395i-3(c)(1)(A)(x); 42 C.F.R. § 483.10(o)(1)(i).
54 42 U.S.C. § 1395d(a)(2)(A), (b)(2); 42 C.F.R. § 409.61(b).
55 42 C.F.R. § 1395f(a)(2)(B); 42 C.F.R. §§ 409.31, 409.32, & 409.34.
56 42 U.S.C. § 1395f(a).

57 56 Fed. Reg. 48,840 (1991) (“A facility with a small Medicare distinct part may wish to move residents whose Medicare coverage is exhausted to [a] distinct part that does not participate in Medicare so that new Medicare patient can be placed in the vacated bed.”).
58 42 U.S.C. § 1395x(i); 42 C.F.R. § 409.30(a)(1).
59 42 U.S.C. §§ 1395i-3(c)(6)(A)(i), 1396r(c)(6)(A)(i); 42 C.F.R. § 483.10(c)(1).
61 42 U.S.C. §§ 1395i-3(c)(6)(B), 1396r(c)(6)(B); 42 C.F.R. § 483.10(c)(2)-(4); Mo. Ann. Stat. § 198.090(1)(3)-(10).
63 42 U.S.C. §§ 1395i-3(c)(5)(A)(ii), 1396r(c)(5)(A)(ii); 42 C.F.R. § 483.12(d)(2).
65 Signature Pool & Court, Div. of Classic Pools, Inc. v. Manchester, 743 S.W.2d 538, 541 (Mo. Ct. App. 1987).
67 42 U.S.C. §§ 1395i-3(c)(5)(A)(i), 1396r(c)(5)(A)(i); 42 C.F.R. § 483.12(d)(1).
68 Bet’Zedek Legal Services, “‘If Only I Had Known’: Misrepresentations by Nursing Homes Which Deprive Residents of Legal Protection” (1995); 1997 Cal. Stat., c. 631; Cal. Health & Safety Code § 1599.6. Unfortunately, the California licensing agency took approximately eight years to develop the standard admission agreement, and it currently is being rewritten to comply with a court order that found problems with the version originally released by the licensing agency.
EXHIBITS—ADMISSION AGREEMENT EXCERPTS
Exhibit 1: Lowering Resident Expectations

- Room and Board
- Specialized Rehabilitation Services
- Prescription Medications up to State limits
- Over the counter drugs (as outlined in State Plan)
- Basic Personal Laundry Services
- Payment to hold bed up to ____ days when Patient transferred to hospital under State prescribed circumstances.

Services not paid for under the state plan include:

- Private room accommodations
- Beauty and Barber services
- Dry cleaning
- Telephone and Television
- Private duty nurses and sitters
- Services for Patients not meeting the medical criteria of the state program.

d. Veterans Administration Coverage

Where contradictions exist between this Admissions Agreement and the VA Contract, a Patient’s VA Contract takes precedence until its expiration at which time all terms of this Admission Agreement apply.

E. CLINICAL ISSUES RELATED TO AGING:

The Patient has been advised of the **high risks** and consequences associated with aging and impaired physical condition, including (but not limited to):

- A high risk of skin breakdown and development of pressure ulcers secondary to significant time confined to bed or inability or unwillingness to eat and/or drink.
- The risk of significant weight loss and dehydration if the Patient’s physical condition is currently chronic or hereinafter deteriorates, which may diminish Patient’s nutritional and hydration input.
- The enhanced risk of falls and subsequent bruises, cuts or fractures, which then increases the already high risk of pressure ulcers.
- The above risks, and others, are covered in a booklet entitled “The Circle of Care” available for your reference. We urge the Patient and all family members to read this and further acquaint themselves with the risk issues inherent in long term care.

Signature: __________________________

Legal Representative: __________________________

Additional Signature (if applicable): __________________________

F. PATIENT CONSENTS AND ACKNOWLEDGEMENTS.

1. The Patient hereby consents to all routine nursing home care rendered in accordance with physician’s orders.

2. The Patient and/or the legal representative are encouraged to participate in the Patient care planning process. Approval of the Patient Care Plan is the preferred manner in which consent for most treatment is obtained. There are certain specific procedures for which an individual consent form will be provided.

3. The Patient consents to pictures taken for identification purposes only, to be maintained as part of the medical record.
Conditions of Admissions

_____ Skilled Nursing Facility        _____ Residential Care Facility

1. General Duty Nursing:
The facility provides 24-hour nursing care. Under this system nurses are called to the bedside of the resident by signal system. The resident is in such condition as to need continuous or special duty nursing care. It is agreed that such must be arranged by the resident or his/her legal representative or his/her physician and the facility shall in no way be responsible for failure to provide the same and is hereby released from any and all liability arising from the fact that said resident is not provided with such additional care.

2. Medical and Rehabilitation Consent:
The resident is under the control of his/her physician(s) and the facility is liable for following the instructions of said physician(s) and the undersigned consents to x-ray examination, laboratory procedures, local anesthesia, medical or rehabilitation therapy or facility services rendered the resident under the general and special instruction of the physician. The undersigned recognizes that all physicians of medicine furnishing services to the resident, including the radiologist, pathologist, anesthesiologist, Doctor of Osteopathy and the like may be independent contractors and not employees or agents of the facility.

3. Release of Information:
Due to HIPAA law (Health Insurance Privacy Portability Act), the undersigned must maintain the privacy and protect your health care information. Health care information can only be released to the resident/or the authorized responsible party for the resident. Health care information may be given to your physician, hospital or other covered health care entities under the HIPAA law.

4. Assignment of Benefits:
In the event the undersigned is entitled to nursing home benefits of any type whatsoever arising out of any policy of insurance insuring the resident or any party liable to the resident, said benefits are hereby assigned to the facility for application on the resident’s bill, and it is agreed that the facility may receive any such payment and such payment shall discharge the said insurance company of any and all obligations under the policy.

5. Financial Agreement:
The undersigned agrees, whether he/she signs as agents or as resident, that in consideration of the services to be rendered to the resident, he/she hereby individually obligates himself/herself to pay the account of the facility in full at discharge. Should the account be referred to an attorney for collection, the undersigned shall pay reasonable attorney’s fees and collection expenses. All delinquent accounts bear interest at the legal rate. If litigation results, the amount of the attorney’s fee shall be set by the court and not by a jury.

The undersigned certifies that he/she has read the foregoing, receiving a copy thereof, and is the resident or is duly authorized by the resident’s general agent to execute the above and accept it’s terms.

"We, the undersigned agree in consideration of admission, to pay all cost(s), charges and expenses incurred on behalf of the resident admitted to

Resident ____________________________________________

Date________________________________________________

Witness _____________________________________________

Resident’s Personal Funds:
This is to authorize __________________________________

Date________________________________________________

Responsible Party ____________________________________

Date________________________________________________

Address ____________________________

Telephone Number _____________________

Social Security Number ________________

Resident / Responsible Party

Page A-3
(9) AMBULANCE POLICY: The Resident, Designated Party, or family member must make their own arrangements for ambulance transportation of a Resident to or from the Facility. In such case billing arrangements for such transportation is the responsibility of the person(s) making the arrangements. In the absence of such an arrangement, or in the event of a medical emergency, the Facility will arrange for ambulance services for the Resident based upon the situation at hand. Billing arrangements for ambulance and related services, in the latter case, will be made by the Facility through normal procedures of the Facility and the ambulance/emergency vehicle operator to include direct billing of such services to the Resident, Designated Party, and/or Medicare, Medicaid, or insurance provider.

(10) RESIDENT CARE PLAN, AND RIGHT TO PARTICIPATE: I, the undersigned, do hereby acknowledge that upon admission and periodically thereafter a comprehensive reproducible assessment of the Resident's functional capacity shall be performed and then there shall be developed a comprehensive care plan for the Resident. I further understand that I have both the right and the opportunity to participate in the development of my comprehensive plan of care.

(11) MEDICARE, MEDICAID, AND SPOUSAL IMPOVERISHMENT INFORMATION: I, the undersigned, have been given written information regarding Medicare and Medicaid and the spousal impoverishment laws of the state.

(12) WAIVER OF LIABILITY - SMOKING: I, the undersigned, do hereby acknowledge that the Resident has been advised of the facility smoking policy. I do hereby agree that if the Resident is injured or any property of the Resident is damaged or destroyed by reason of smoking by the Resident, the Admitting Facility shall not be liable for and hereby held harmless from all liability for such injury, damage or destruction. The Resident may, furthermore, be held liable for any damages caused to the Facility by reason of smoking by the Resident.

(13) WAIVER OF LIABILITY - ELECTRICAL APPLIANCES AND PERSONAL FURNISHINGS: I, the undersigned, do hereby agree that the use of personal furnishings or electrical appliances in the Resident's room of the Facility is at the Resident's risk and the Facility is hereby absolved and released of any and all responsibility and liability for burns, injuries, property damage or losses which may result from or because of said use. I further acknowledge and agree that only UL approved appliances, surge protectors/power strips and extension cords may be used in the Resident's room, and the Facility must be assured that no more than 20 amps are carried per circuit in the room. I further acknowledge and agree that the Administrator of the Facility must approve the use of any appliance and/or electrical extension cord in the Resident's room.

(14) RELEASE OF RESPONSIBILITY FOR LEAVING WITHOUT APPROVAL: I, the undersigned, do hereby certify that the Resident is being admitted to the admitting Facility on his or her own volition and the Facility, its personnel and the attending physician are absolved and released of any responsibility if the Resident should leave the premises of the Facility for any reason whatsoever without the consent of the attending physician and notice to the Facility management.

(15) AUTHORIZATION FOR RELEASE OF BODY: I, the undersigned, do hereby certify that in the event the Resident expires, the admitting Facility is hereby authorized to release the body to the mortuary specified on the face sheet and authorization sheet.

(16) GENERAL DUTY NURSING CARE: The Facility provides general duty nursing care. If the Resident is in such condition as to need continuous special duty nursing care, it is agreed that such must be arranged by the Resident or his/her legal representative or physician and that the Facility shall in no way be responsible for failure to provide the same and is hereby released from any and all liability arising from the fact that said resident is not provided with such additional care.

(17) QUALIFIED ACCESS TO CARE: The Facility does hereby guarantee to each and every Resident of this Facility and shall be entitled to receive equal access to care regardless of source of payment. This Facility does not discriminate in admission or provision of care to Residents on any basis to include race, color, religious creed, national origin, physical handicap, and including Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS)
MANOR NURSING HOME

ADMISSION AGREEMENT

The ___________________________ and ___________________________
(Name Of Facility) (Name Of Resident or Responsible Party)
hereby agree to the following financial terms and arrangements providing for the medical,
nursing, and personal care of ___________________________.
(Name Of Resident)

Manor Nursing Home ("Facility") will provide general nursing care, room, board,
linens, and bedding for the comfort and well being of the Patient.

Patient acknowledges that he is under the care of his personal physician and Facility shall not be
liable for any acts or omissions in following the instruction of said physician, and Patient hereby
consents to any treatments or services rendered by Facility pursuant to the instructions of the
physician. Patient's personal physician, or any other physician, may be called in attendance by
Facility whenever deemed necessary or advisable by Facility, and the expense incurred hereby
shall be the Patient's responsibility. In addition, Patient acknowledges that Facility may arrange
for transfer of Patient to a hospital of Patient's choice whenever deemed necessary or available by
Facility and the expense incurred by said transfer shall be the Patient's responsibility.

Patient agrees that special duty nursing services must be arranged for by the Patient and Facility
shall in no event be liable for any harm or loss for failure to provide the same.

Patient releases Facility from any and all harm, injury or loss suffered by Patient while outside
the physical confines of Facility.

Facility shall not be responsible for loss, theft or destruction of money, papers or personal
property of Patient or any other person except as delivered to the Administrator for safe keeping.

The undersigned and each of them individually agree, in consideration of services to be rendered,
to pay on demand all charges incurred by Patient in accordance with the regular rates of Facility.
Where other sources of payment may be available, such as state and/or federal agencies (under
Medicare, Medicaid or other programs) or insurance companies, Facility will aid Patient in
determining whether a Patient's care may be so covered and, if appropriate, will submit a claim to
the appropriate agency for payment. Such submission does not, however, relieve Patient or the
undersigned of payment if it is determined that such care is not covered or if such care is found to
be only partially covered. Patient and the undersigned acknowledge that no representation,
statement or claim has been made by anyone connected with Facility that the care provided to
Patient is or will be covered under Medicare, Part A or Part B, or Medicaid or by insurance
companies. Facility does not make any assurance of any kind whatsoever that Patient's care will
be covered by Medicare, Medicaid or insurance companies, and the undersigned hereby releases
Facility, its agents, servants and employees from any liability or responsibility in connection with
Resident/Representative agrees to participate actively in the care provided to Resident in the Facility which participation shall include attending care conferences, encouraging the Resident to comply with all physician orders and the care plan, to notify promptly the Executive Director, Director of Nursing, Medical Director as well as corporate associates within the Facility’s corporate office, regarding any concerns of the care that is being provided to the Resident within the Facility.

Resident/Representative further understands and agrees that if they believe that the Resident is not receiving the level of care which meets their expectation, the Resident/Representative has the right to either pay for additional care through the use of private-duty personnel or to remove the Resident from the Facility and place the Resident in another health care setting, which the Resident/Representative believes would be more suitable to the Resident’s needs.

Section 8: Consent for Treatment

Medical Services
By the execution hereof, Resident/Representative acknowledges that Resident shall be under the care and treatment of an Attending Physician while residing in the Facility. All services provided by the Facility will be in accordance with the general and specific instructions of such Attending Physician.

The Resident/Legal Representative may choose any physician licensed by the state in which the Facility operates as his Attending Physician, as long as the Attending Physician agrees to follow and abide by the rules, policies, and procedures of the Facility and by the applicable state and federal laws and regulations. The Resident/Legal Representative understands and acknowledges that the Attending Physician is not acting as an employee or agent of the Facility when providing clinical care to individual residents, and that the Facility is neither liable nor responsible for the acts or omissions of the Attending Physician.

Nursing Services
The Resident/Legal Representative consents to the routine nursing services and supplies referenced in the applicable portions of Sections 3 and 7 herein, as well as services ordered by Resident’s Attending Physician.

The Resident/Legal Representative also consents to emergency care provided by the Facility under the direction and instruction of the Attending Physician.

Restraint-Free Policy
The goal of the Facility is to strive for a physical restraint-free environment, and processes are implemented to pursue this aspiration. These processes recognize and protect the Resident’s rights and ensure, when used, that restraints are safe and appropriate. Residents have a right to live without the fear of restraint, and as caregivers the Facility must make every attempt to provide effective alternatives, using restraints only as a last resort. Restraints may only be imposed to ensure the physical safety of the Resident or other residents and only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances).
the hospital.

4. A resident who is gone for more than thirty (30) consecutive days forfeits their room and the right to live at The Home.

5. The Power of Attorney shall be responsible to maintain adequate health insurance for the resident and is responsible for all funeral expenses for the applicant.

H. IT IS UNDERSTOOD AND AGREED by all parties, regarding:

1. **Nursing Services:** Nursing Staff work in the facility seven days a week, 24-hours a day. The Nursing Staff is assigned to provide reasonable and customary nursing and personal care. These services are provided under the supervision of a Director of Nursing or his or her designee. Resident, Family and Representative (designated contact persons and legal representatives) recognize and agree that the services provided by this facility do not include one-on-one, seven days per week, 24-hours per day services and further, that their expectations shall be contingent upon this understanding.

2. **Service Limitations:** The parties hereto agree that the services provided by and others within this facility are not designed to somehow protect the Resident from everyday, normal risks and responsibilities of living, including, but not limited to, such general accidents and situations such as falling, choking and weight loss and/or dehydration resulting from a Resident’s failure to partake of food and drink. Additionally, the parties hereto understand that the services provided by do not include 24-hour one-on-one seven (7) days per week monitoring of its Residents.

3. **Refusal of Services:** shall make good faith efforts to provide services to the Resident, as are routinely provided, including those prescribed by Resident’s attending physician. However, shall not be responsible for outcomes associated with a Resident refusing to comply with such services. Should a Resident refuse food, fluids, treatments, therapies, medications, grooming, therapeutic bathing, recommended health practices, care plans, etc. and/or refuse to comply with physician’s orders (for example, if a resident is a diabetic with orders not to consume sugar, but Resident eats candy of own will, etc.), shall in no way be responsible for the outcomes associated with such Resident behavior. This shall apply to mentally competent and incompetent Residents. shall not be expected by Resident, Family and Representative to intimidate or threaten a Resident into doing what and/or attending physician believes is best for the Resident. Resident, Family and Representative are strongly encouraged to
participate in the planning of Resident's care both with the attending physician and

4. **Reasonable Expectations:** Resident, Family and Representative acknowledge that they have seen and clearly understand the "Setting Realistic Expectations" video. The Resident, Family and Representative agree and acknowledge that the "Setting Realistic Expectations" video clearly state his or her acceptance of and commitment to a reasonable expectation of service and care to be provided by and received from with same to be paid for by the Resident. Further, the parties hereto consent to the admission into evidence of this Agreement, along with the "Setting Realistic Expectations" video, in the event of arbitration or any other form of legal or administrative proceedings.

I. **IT IS MUTALLY UNDERSTOOD** this agreement is binding on the Resident, Family, and any party claiming representation rights for themselves or in behalf of the resident.

J. **IT IS MUTALLY UNDERSTOOD** that reserves the right to refuse and discontinue admission to any person whose welfare and medical needs cannot be met by the facility or because the safety or health of individuals in the facility would be endangered by the admission of such person and shall be binding upon the parties hereto, their personal representatives, heirs and successors.

K. **THIS AGREEMENT** shall become effective on the date in which the Resident is admitted to and applies to both Residential Care and Intermediate Care.

L. **THIS AGREEMENT FURTHERMORE;**
   1. Has been negotiated and executed in, and shall be performed in the State of Missouri and shall be governed by its internal laws.
   2. Each party shall pay its own professional expenses for any professional advisers required for the solicitation, negotiation, execution, or performance of this Agreement.
   3. Any notice required by this Agreement shall have been properly given and shall be effective when personally delivered, mailed by certified mail or by nationally-known private overnight delivery service, when sent by telegram or facsimile transmission, email, postage or transmission costs prepaid, to the address of the party to receive the notice as given at the beginning of the Agreement.
   4. The provisions of this Agreement are separable. The invalidity or illegality of any provision shall not be a bar to the enforcement of any other provision.
   5. This Agreement may be terminated by either party upon Thirty (30) days written notice

________________________Initials________________________

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Revised 8.1.03
m. Public Resident Resident shall be considered a "Public Resident" for any period of time for which Resident is eligible and the Facility is certified to have the Facility reimbursed directly for the cost of Resident's care (i) by DOSS pursuant to the Medicaid program, or (ii) by the Veterans Administration pursuant to a contract between the Facility and the Veterans Administration or (iii) by the Medicare intermediary pursuant to Part "A" of the Medicare program.

n. Private Resident Resident shall be considered a "Private Resident" for any period of time for which Resident is not considered to be a Public Resident.

o. Resident "Resident" shall include the Resident identified above and the Designee and Guardian/Conservator identified below who shall execute this Agreement.

II. FACILITY OBLIGATIONS

2. Basic Services The Facility shall furnish personal care, room, board, laundry and nursing care for Resident to the extent required by the Minimum Standards. Resident acknowledges that he or she has been fully informed of the services available at the Facility. Any services which the Facility is obligated to perform under this Agreement may be performed by Facility through its employees or by independent contractors. By signing the Acknowledgement page of this Agreement, Resident acknowledges and agrees that the staffing of Facility is based on the number of residents in the Facility and their conditions. The Facility does not assign or provide one staff person to provide exclusive individual care (which is sometimes called "one-on-one") to Resident at all times. Resident agrees that the staffing level provided by Facility as described above is acceptable to Resident.

3. Attending Physician The Facility agrees to allow the physician which Resident identifies on Exhibit A as Resident's attending physician access to the Facility for the purpose of treating Resident. The Facility will provide an alternative physician for Resident in the event Resident's personal physician is not available. The Facility has delivered, and Resident hereby acknowledges receipt of Exhibit A entitled "Disclosure and Information Form". The Facility shall not provide Resident any medicines, treatments or special diets except as ordered by the attending physician, the Facility medical Director or other legally authorized Facility staff member.

4. Restraints and Falls The Facility limits the use of physical and chemical restraints. Restraints are not permitted for discipline or convenience. Restraints can only be used under limited conditions such as:

   a. Where required to treat a medical condition of the Resident and ordered by a physician; or
   b. When needed in an emergency to protect the Resident or others in the Facility.

   Falls may occur in a long term care facility just as they may occur in a person's home. The use of restraints to prevent falls is not permitted where there is no specific medical diagnosis and an order of a physician. By signing the Agreement, Resident acknowledges that Resident understands the procedures outlined above and agrees with them.

5. Pharmacist The Facility agrees to allow the pharmacist Resident designates on Exhibit A to serve as Resident's pharmacist. Payment of any charges for the services, medication, durable medical equipment or other products provided by any pharmacist (except for those items which are included in the state plan as set out in Appendix 1 of Exhibit A if Resident is qualified for Medicaid benefits) not paid by the Medicaid Program, the Medicare program or the Veterans Administration shall be the responsibility of Resident and not the Facility, unless otherwise provided by law.
V. Representations, Interpretations and Completeness

1. Resident Representations. Admission of the resident is based on the representations contained in the admission documents. The resident and fiduciary party represent that the statements made in all admission documents are true, correct and complete without omissions of any material facts. Furthermore, the resident and fiduciary party shall promptly inform in writing of any changes in the statement included in all admission documents.

2. Acknowledgment of Resident’s Financial Responsibility. While the organization may assist in the procurement of third-party payor coverage, including Medicaid, Medicare and other insurance coverage, for the cost of residency and treatment, the resident and his/her legal representative acknowledge that such assistance does not guarantee coverage or the amount of payment by any payor source. The resident acknowledges that assistance by his/her legal representative to satisfy debts incurred for services rendered does not alter his/her responsibility to satisfy debts incurred for services rendered.

3. Health Care Center Representations. This organization utilizes reasonable efforts to provide all goods and services to the resident in accordance with applicable law and the representations contained herein. However, because the provision of health care services is a personalized service requiring interventions on many occasions by many persons, the resident acknowledges that the standards and/or representations will not be satisfied from time to time.

4. Interpretation of Provisions. Wherever possible, each provision of this contract shall be interpreted in such manner to be effective under applicable law. If at any time any provision of this contract shall be prohibited by or invalid under applicable law, such provision shall be severed from the contract and the remaining provisions of this contract shall be unaffected.

5. Complete Agreement. This contract, the contract addendum(s), and the documents listed on the acknowledgement page attached to this contract and made a part hereof constitute the entire contract between the parties. This contract may not be amended except in writing executed by the parties or their successors.

The undersigned acknowledge that each of them has read and understood this contract, and that each of them voluntarily consents to all of the terms.

Resident Signature

Date

Responsible Party/Fiduciary Party

Date

Facility Representative

Date
Resident Rules and Regulations

Smoking:
For safety reasons, the resident and any visitor to this facility are hereby advised not to smoke except under supervision and/or in designated smoking areas. Residents may not retain matches or lighters.

Electrical Appliances and Personal Furnishings:
All electrical appliances and/or apparatus must be approved and routinely checked by the administrator or his/her designee.

Personal Possessions:
All possessions of the resident must be permanently marked and identifiable when brought into the facility.
The facility will maintain a record of personal items brought by the resident upon admission. Items brought into the facility thereafter, must be reported to the nursing personnel so the list of personal possessions of the resident can be accurately updated.

Visiting Hours:
Regular daily visiting hours for the facility have been established and posted. The facility reserves the right to limit any or all visitors.
Relatives or guardians and clergy, if requested by the resident or family, will be allowed to see critically ill residents at any time in keeping with the orders of the physician.

Medications:
All prescribed medications and medications such as antacids, cough syrups, laxatives and ointments brought into the facility, must be left at the nurse's station, packaged per facility policy, and consistent with physician orders.

Food:
All food or drink brought into the facility must be approved by the charge nurse prior to consumption by the resident. All non-perishable food stored at the bedside must be in an airtight, leak-proof container with lid.

Resident Name

Date

Responsible Party Name

Resident/Resp. Party Signature

Facility Representative

Facility Name
VISITING HOURS

Visiting hours are from 10:30 AM to 8:30 PM. These hours are posted at the front entrance of the building. Any NECESSARY visits at another time will be at the discretion of the Administrator/DON/or the Charge Nurse on duty on that particular shift. Main entrance doors are to be locked at 8:30 PM. At 11:30PM the rear entrance doors are to be locked also.

RESIDENT'S SIGNATURE               WITNESS               DATE

OR LEGAL REPRESENTATIVE'S SIGNATURE  WITNESS               DATE

“EQUAL OPPORTUNITY-AFFIRMATIVE ACTION-HANDICAPPED EMPLOYER-PROVIDES A NON-DISCRIMINATORY SERVICE”
HEALTH CARE CENTER AGREEMENT

THAT CONTRACT, made and entered into this ______ day of ________, ________, by and between ________, (resident/responsible party)

________________________, hereinafter referred to as a Responsible Party,

________________________, hereinafter known as the Facility,

Part. the ______, ________, (relationship) of __________________________, hereinafter referred to as the Resident, and

________________________, (resident)

WITNESS:THAT:

1. That the parties hereto agree that the stipulations and covenants herein contained, shall be the full measure of the obligations and responsibilities of the Responsible Party and Facility.

2. The Responsible Party does hereby agree as follows:
   a. To be fully responsible for all financial obligations incurred by the Resident, while residing in the Facility.
   b. The Responsible Party authorizes the Facility to order or purchase at the direction of a licensed physician all necessary medicine and drugs for the use of the Resident, and to purchase all necessary services and miscellaneous supplies required for the comfort and well being of the Resident.
   c. When Medicaid benefits are being used, the Responsible Party authorizes the Facility to bill Medicare and Co-Insurance for services rendered. Responsible Party also agrees to make payments for Co-Insurance days in advance, Responsible Party will then be reimbursed by Co-Insurance.
   d. When Medicaid benefits are being used the Responsible Party agrees to comply with the payment requirements as set forth by the Division of Family Services.
   e. That all payments to the Facility be made in advance. When any account becomes delinquent the Resident may be discharged by the Facility.
   f. To make regular payments monthly at the rate of $_______ per day plus Level of Care _______ at $_______ per day for total daily charges of $_______. The regular monthly payments includes charges for room, board, laundry, and general care only. They are subject to change as the Level of Care changes.
   g. That the Facility will give credit for Level of Care charge for short term leave of absence, that the daily rate of $_______ will be charged to the Resident to reserve Resident's room in the event of hospitalization. The Level of Care charge will be credited to the Resident's account for hospitalizations. Responsible Party is responsible for informing Facility if Residents' room is not to be reserved. (See Bed Hold Policy).
   h. That the Facility reserves the right to transfer the Resident to other in-house accommodations at the discretion of the Administrator or Director of Nurses.
   i. To abide by all operating rules of the Facility.

3. The Facility agrees:
   a. Subject to this contract and the operating rules of the Facility, to provide room, board, laundry service and general care to the Resident.
   b. That in the event of death the Facility shall allow a refund for any remaining days of a paid period.
   c. To use reasonable care to protect the life and property of the Resident and will not be held responsible for accidents or injuries sustained by the Resident during residence in the Facility, including participation in Activity functions, nor will the facility be responsible for money, valuables, prosthetic appliances, including but not limited to dentures, hearing aides, and glasses, or jewelry of the Resident, nor for the clothing or personal articles not marked in accordance with the operating rules of the Facility.

IN WITNESS WHEREOF, the Responsible Party and the Facility hereto have executed this agreement in duplicate the day and year first above written.

Resident/Responsible Party ____________________________
Date ____________________________

Facility Representative ____________________________
Date ____________________________
Notwithstanding the provision of security services by
will not be responsible for the criminal acts of its agents or
employees, or third parties.
Neither nor any of its affiliates or partners, nor the directors,
officers, employees, or agents of its affiliates or partners, nor the directors,
officers, shareholders, employees, or agents thereof will have any personal
liability hereunder under any circumstances to Resident, the Resident's
Representative or the heirs, executors, administrators or legal representatives
thereof. No delay or omission on behalf of to exercise any right
or power arising from any breach hereof by the Resident or the Resident's
Representative will impair any of the rights or powers hereunder. No waiver on
behalf of or any breach hereof will be construed as a waiver-of-
any proceeding or other duty or responsibility of the Resident. The Resident's
obligations to pay the sums due under this Agreement shall
survive the termination or expiration of this agreement.

GUARANTEE. If this Agreement is executed below by the legal representative of
the Resident or if the Resident's Representative joins in the execution of this
Agreement in the space provided below, then the legal representative of Resident
and/or the Resident's Representative, as the case may be, do each, jointly and
severally, guarantee the full, timely, and complete performance of the Resident's
responsibilities, obligations, duties, and agreements under this Agreement and
do each, jointly and severally, guarantee the payment of the sums due
under this Agreement. By signing this Agreement in the space provided
below, Resident's legal representative and Resident's Representative
acknowledge and agree that is relying on the agreements
contained in Section A in admitting Resident for occupancy in the Home.

IN WITNESS WHEREOF, the parties have executed this Agreement effective
as of the day and year above written, each having retained a copy of this
Agreement and attached Exhibits.

By: ______________________________
Resident's Or The Residents/Representative - Signature and Date

By: ______________________________
Representative - Signature and Date

is an Equal Opportunity and an Affirmative Action Employer and Service Provider.
All policies apply equally to all Residents without regard to race, color,
sex, religion, age, national origin, disability,
or any other consideration made unlawful by federal, state, or local law.
fees, lab fees, medications, and other goods and services not directly provided by the Facility.

m. If any terms or conditions of this agreement are invalid or unenforceable by reason of any rule of law, federal or state statute or regulation, or relevant local law, statute or regulation, then the remaining provisions of the agreement shall be construed as if the invalid or unenforceable terms or conditions did not exist and shall remain in full force and effect.

7. Agreement to Arbitrate All Claims, Disputes, Controversies

By entering into this Agreement, all parties hereto agree that any and all claims, disputes or controversies between the Resident and Facility shall be resolved through arbitration and not a court of law, pursuant to the Arbitration Agreement attached hereto and incorporated herein by reference as Exhibit A.

8. Limitation of Damages

In the event one party to this Agreement is found to be liable to the other party, the prevailing party's damages shall be limited to his/her/its direct, economic damages. Under the circumstances shall a prevailing party's damages include incidental, indirect, special, exemplary, consequential or non-economic damages. The term economic damages means those damages arising from pecuniary loss or harm, including but not limited to, costs for medical care, equipment and services, costs to repair or replace personal property and loss of income. Non-economic damages are those arising from non-pecuniary loss or harm, including but not limited to, pain, suffering, mental anguish or distress, inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life and loss of consortium.

I have read and understand this entire agreement and the documents references therein. I accept all terms and conditions stated in this agreement and its attachments.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Resident Name ___________________________ Resident Signature/Date ___________________________

Responsible Party ___________________________ Responsible Party Signature/Date ___________________________

Relationship to Resident ___________________________

Facility Representative ___________________________ Signature/Title/Date ___________________________
24. **Denial of Medicare and Medicaid**: If the Resident applies for benefits under Medicare or Medicaid after the Resident is admitted and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

25. **Failure to Pay Our Bill**: In the event that the Resident is not entitled to Medicare or Medicaid benefits or in the event the Resident has requested items or services that are not covered or reimbursable by Medicare or Medicaid, the Resident agrees to pay the bill upon receipt of billing, or no later than the 1st of each month.

26. **Failure to Pay other Bills**: Unless payable by other sources such as Medicare or Medicaid, the Resident agrees to pay the bills of others providing services or supplies. The Resident agrees to pay their bills within 15 days after billing, unless other acceptable arrangements are made in advance with them.

27. **Interest and Attorney’s Fees**: For any charge for an item or service for which the Resident is responsible and which is not reimbursable in any way by the Medicare or Medicaid Programs. The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorneys’ fees and the costs of collection. The provisions of this section 27 shall apply to Medicare and Medicaid residents to the extent by only to the extent the Medicare or Medicaid Programs (for example, without limitation, private room, special meals, and similar items not paid by Medicare or Medicaid) and, therefore, are the direct responsibility of the Resident pursuant to this agreement.

28. **Valuables**: The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see the misplaced belongings are recovered, the Facility is not responsible if they are lost, damaged, or stolen.

29. **Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records. Further, the Resident authorizes the Facility to obtain any medical information from previous hospital stays, personal physician information, and any other information that will constitute continuum of care for the resident.

30. **Resident Information**: The Facility is authorized to require a standard method of Resident identification, e.g., an identification bracelet and/or photographic print.

31. **Release from Responsibility**: If the Resident leaves our Facility for any reason, the Facility will not be responsible for the Resident’s condition while the Resident is away. The Resident releases the Facility from responsibility for any accident or injury that may occur as a result of outside activities in which the Resident chooses to participate.

32. **Liability**: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or our employees.

33. **Resident’s Bill of Rights**: The Resident has a copy.

34. **Compliance with Facility Rules and Regulations**: The Resident and Responsible Party agree to comply with all Resident’s Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility’s rules and regulations which set forth these responsibilities.

35. **Photographs**: The resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes.

36. **Advanced Directives**: The Resident acknowledges receipt of information concerning advanced directives and your rights to make decisions about medical care.

37. **Consent to Treatment**: The Resident agrees to be admitted to our Facility of his/her own free will. Resident acknowledges that he/she is under the medical treatment and care of an attending physician, and consents to the Facility rendering nursing care and treatment under the general or special instructions of said physician or in
6. **General Agreements:**

   a. The Resident, Responsible Party, and Legal Representative (if applicable) consent to the administration of such care, treatment, services, and medical or nursing procedures as the Facility and resident’s attending physician deem appropriate.

   b. The Resident, Responsible Party, and Legal Representative (if applicable) acknowledge receipt of:

      (i) The Facility’s policy on Bed Holds for Hospital Stays and Therapeutic Leaves.

      (ii) The Resident’s Statement of Federal and State Rights.

      (iii) The facility’s Statement of Privacy Practices

   c. All responsibility of the Facility to the Resident shall terminate whenever the Resident knowingly leaves the Facility against the medical advice of the Resident’s attending physician and/or without the approval of the Facility, with or without the knowledge of the Facility.

   d. The Facility is not responsible for the health, safety, or welfare of any Resident who is away from the Facility with any person not directly employed by the Facility.

   e. The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, or welfare of the Resident and assumes no liability as such.

   f. The Facility is authorized and directed to release information concerning the Resident to insurance companies, third-party payers, and/or federal or state agencies and regulatory bodies, in connection with care rendered or to be rendered to the Resident to the extent necessary for the Facility to assist the Resident in obtaining payment and otherwise comply with applicable federal, state or local laws and regulations.

   g. The Resident shall defend, indemnify and hold the Facility harmless from any and all claims, demands, suits, actions, and related costs and expenses, including attorney’s fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person or the property of any person or entity (including the Facility). Further, the Resident agrees to pay for any and all costs relating to any property of the facility, staff, visitors, or other residents destroyed or damaged by the Resident.
Exhibit 16: Limiting Nursing Home’s Liability for Personal Property

consent to Resident’s transfer to one of the following hospitals: (i) any hospital at which Resident’s attending physician has staff privileges; (ii) any hospital at which any other physician of Resident has staff privileges; (iii) if Resident’s care at the Facility is being paid for under a contract with the Veterans Administration, to any Veterans Administration hospital or; (iv) in the event Emergency Medical Services deems necessary, to the nearest hospital.

7. **Bed-Hold Policy.** In the event Resident shall be transferred to a hospital or shall go on a therapeutic leave, the Facility agrees to permit the Resident to return to the facility at any time during the bed-hold period as set out in Exhibit A provided that the Resident’s needs can be met by the Facility.

8. **Valuables.** The Facility shall not be responsible for any money, valuables, or personal effects brought into the Facility by Resident, relatives, or friends unless delivered to the custody of the Facility’s Administrator for safekeeping.

9. **Disclaimer.** In dealing with Resident, the Facility will exercise reasonable care in light of Resident’s condition and to the extent lawfully required under the Act. However, the Facility is in no sense an insurer of Resident’s welfare or safety, and assumes no liability as an insurer. The Facility shall not be responsible in any way for the care of Resident at any time Resident is on leave outside the premises of the Facility.

10. **Room and Roommate Transfers.** The Facility reserves the right of room and roommate transfer at its discretion and consistent with the health and welfare of Resident, provided that any notice required by law shall be given to Resident.

11. **Privacy of Resident’s PHI.** The Facility will use its best efforts to use and disclose the Resident’s PHI in conformance with HIPAA and state law, and consistent with the terms and conditions described in the Facility’s Notice of Privacy Practices, that is attached hereto as Exhibit C and incorporated herein by this reference. Such Notice sets forth certain rights and responsibilities of Resident and of Facility with respect to such PHI.

12. **Resident’s Rights and Advance Directives.** The Facility has delivered, and Resident hereby acknowledges receipt of copies of this Agreement, Exhibit B entitled “Resident Rights,” Exhibit C entitled “Notice of Privacy Practices,” and an Acknowledgment Form acknowledging the Resident’s receipt of these documents and addressing issues related to Advance Directives.

**III. RESIDENT OBLIGATIONS**

1. **Rules and Regulations.** Resident agrees to abide by all rules and regulations which may be established from time to time in connection with operation and maintenance of the Facility, including those governing Resident’s conduct and responsibilities.

2. **Spending Money.** Resident shall provide such spending money as may be needed for Resident’s well-being and personal needs, subject to any authority which may be granted the Facility in Section IV (6) of this Agreement.

3. **Personal Effects.** Resident shall provide and mark such personal clothing and effects as Resident may desire. The Facility assumes no liability or responsibility whatsoever for loss of or damage to such items unless delivered to the custody of the Facility’s Administrator for safekeeping. Resident shall remove all clothing and personal effects upon discharge from the
Exhibit 17: Limiting Nursing Home's Liability for Personal Property

Admission and Financial Agreement

Loss of Personal Property
The Facility will not be responsible for theft, destruction, or other loss of money, papers, clothing, jewelry, dentures, eyeglasses, hearing aids, or other personal property unless the property was delivered to and accepted in writing by a Facility representative or the loss was caused by the Facility’s gross negligence or intentional misconduct.

Room Assignments
The Facility has the right to transfer the Resident to another room or bed within the Facility consistent with the safety, care, and welfare of the Resident and with any applicable State and Federal laws and regulations. The Facility may also transfer or change the Resident’s roommate, if any, at the time consistent with the provisions of this paragraph.

Photographs
The Resident agrees to allow the Facility to photograph the Resident as a means of identification or in case of emergency. Photographs may be taken and displayed as part of an ongoing activity program and special event. The Resident has the right to request this type of photograph not be displayed. Photographs will be kept confidential, and advance, written permission must be obtained from the Resident if used for purposes other than those stated in this paragraph.

Pharmacy Services
The Facility has selected a designated pharmacy to provide medications within a uniform medication distribution system. This system complies with Facility established policies and procedures for drug therapy, distribution, and control. The pharmacy supplies generic drugs unless specifically requested by the physician or Resident to provide brand name drugs. Generic medications offer the equivalent quality and dose of drugs at a reduced cost. Most medications and supplies are included in the Medicare or Medicaid rate. The pharmacy may be able to bill some insurances (excluding Medicare supplements) for certain items. For medications and supplies not covered or partially covered by Medicare, Medicaid, or an insurance plan, the cost is the responsibility of the Resident and Legal Representative.
Admission Agreement

This Admission Contract is executed as of ________________________, by and among

Health and Rehab Center, a corporation at

_____________________________ ("resident") and/or

_____________________________ ("fiduciary/responsible party"). if any.

In consideration of the mutual promises contained in this contract, the parties agree as follows:

Resident of ______________________ Health and Rehab will be admitted regardless of race, color, national origin, sex, age, religion, creed, ancestry, veteran or disabled status. In regards to the disabled, an effort will be made to admit those residents that it is within the reasonable ability of the facility to care for. The administration wants to promote the fair treatment of all residents while meeting the individual’s needs. Should any resident, family member or responsible party feel they have been treated unfairly, please inform the administrator or assistant administrator in writing of the facts associated with the event.

The facility maintains a safe for the safekeeping of money and valuables at no charge to the resident. This safe may be accessed during normal accounting office hours.

Personal possessions of the residents of ______________________ are kept in the resident’s room while they are in the hospital or away from the home unless the facility is instructed otherwise by the resident or responsible party. When so instructed, the facility will pack the resident’s personal belongings and store them in an area that is safe until the resident or responsible party either returns to the facility or picks up the items and signs a receipt. We encourage residents not to bring valuable articles to the facility. However, if you choose to do so they must be locked in our safe.

As to items of personal property that are not stored in the safe or in a safe place, ______________________ will not be responsible for the loss or damage of personal property of a resident, even if loss is attributable to the ordinary negligence of the facility or its employees. By executing this agreement, the resident and/or responsible party waive any claim they may have against the facility for loss or damage to items of personal property occasioned by the ordinary negligence of the facility or its employees.

Resident bed holding policy is 100% of the current room rate. Whenever a resident is away from his/her room, the full per diem rate will need to be paid in order to reserve a bed at the facility. For those residents on medical assistance (Medicaid), it should be noted that under Title XIX Medicaid, the nursing home is not paid for the bed holding. Any resident on Medicaid who wishes to reserve a bed at the facility, will need to make arrangements with the office to pay for bed holding. ______________________ cannot guarantee to hold beds for residents under the Title XIX Medicaid program, unless the arrangements are made to reserve a bed. Any Medicaid residents, who do not wish to hold this bed, will be eligible for the next available bed at no charge. However, it should be noted that the waiting time for the next bed may vary from days to months.

Due to the likelihood of long-term care residents visiting a hospital sometime during their stay, the facility asks that upon the time of admission, the resident or responsible party make a decision regarding the bed holding policy for resident’s under Title XIX Medicaid, even if it is not anticipated that the resident will be on Medicaid in the foreseeable future.

_______________ will not be responsible for a resident who removes himself/herself from the facility or is removed by the family or responsible party.
12. The Resident and/or Responsible Party agrees to be financially responsible for all ambulance and hospital bills when and if hospitalization becomes necessary.

13. The undersigned agrees that should they fail to notify said Facility of any changes in address or phone numbers, then said Facility can take whatever action necessary to protect the health and welfare of the Resident.

14. BED HOLD POLICY;

   It is the policy of the Facility to notify all Residents and/or Responsible Party’s of the bed hold policy for the Facility. If a Resident is discharged to the hospital, the bed may be held by paying the private prevailing per day rate at the time of discharge. When a Resident is discharged from our Facility, the Resident’s Responsible Party will be notified by our Admissions Coordinator regarding the availability upon return from the hospital.

   If the Resident or Responsible party does not want the bed held, then the bed may be released. Any personal belongings must be picked up within 24 hours. The Facility will not be responsible for items left in the Facility over 30 days.

   If the bed is not held and is released, when the Resident wants to be re-admitted to the Facility, the Resident may be re-admitted to a different bed and/or room if available. If a bed is not available, the Resident’s name can be placed on a waiting list for the first available bed.

   Full charges continue for Assisted Living Residents who are hospitalized or on LOA. Charges accrue until the apartment is vacated and furnishings removed.

   In the event an Assisted Living Resident requires a temporary stay in the Skilled Nursing Facility (SNF) section, an additional per diem fee will be charged. If temporary SNF Care is required more than 30 days or SNF placement becomes permanent, the current SNF rate would be charged.

15. Resident Furnishings and Personal belongings;

   We encourage Residents to have and enjoy personal items. However, upon permanent discharge, Resident’s personal belongings should be removed as soon as possible. The facility will not be responsible for items left in the Facility over 30 days.

   In regards to the apartment units, pro-rated rental fees will continue as long as furnishings remain in the unit. We request arrangements be made within seven (7) days.

16. The resident and/or Responsible Party authorizes physicians, staff, and contracted services to provide treatment and services to the resident.

17. I understand that is NOT responsible for any damages and/or loss of personal belongings or valuables of any kind. Should you choose to keep any valuables (e.g. currency, jewelry, keepsakes, etc.) in the Resident’s room, you may wish to have these things insured.
ADMISSION AGREEMENT

(NAME OF FACILITY) AND (NAME OF RESPONSIBLE PARTY)

hereby agree to the following financial terms and arrangements for the medical nursing and personal care of:

(NAME OF RESIDENT)

HEALTH CARE FACILITY AGREEMENT

1. To furnish room, board, linens, and bedding, nursing care and such personal services as may be required for the health, safety, good grooming and well-being of the residents.

2. To assist in obtaining the services of a licensed physician of the resident's choice whenever necessary, or the service of another licensed physician, if a personal physician has not been designated or is not available, as well as such medications as the physician may order.

3. To arrange for transfer of the resident to the hospital of the resident's choice, when this is ordered by the attending physician, and immediately attempt to notify the responsible party of such transfer.

4. To make refunds in accordance with established policy of the facility.

AGREEMENT OF RESIDENT OR RESPONSIBLE PARTY

1. To provide such personal clothing and effects as needed or desired by the resident.

2. To provide such spending money as needed by the resident for personal items.

3. To be responsible for hospital charges, if hospitalization of the resident becomes necessary and transportation to and from the hospital.

4. To be responsible for physician's fees, dentist fees, medications, ambulance service, and other treatments ordered by the physician which are not covered by Medicaid or Medicare.

5. To pay amount agreed upon with Facility at specified intervals for resident's portion of rate.

6. To not hold the facility responsible or liable for the loss or damage of any money (not deposited in resident trust fund), jewelry, documents or any other personal property. All articles retained in the resident's possession, including dentures, eyeglasses, hearing aids, clothing, etc., shall be entirely the responsibility and liability of the resident.

7. To abide by the facility's policies and procedures, rules and regulations relating to the safety and welfare of the facility's clients, staff and visitors.

"TRANSFER OR DISCHARGE"

The resident and/or responsible party agrees that the resident may be discharge from the facility at any time upon appropriate orders of the resident's attending physician. Further, it is agreed that the resident may be involuntarily discharged for medical reasons or for his/her welfare or that of other residents, or for non-payment of sums due to the facility, provided that the resident and/or responsible party shall be given reasonable advance notice of the proposed discharge. The responsible party agrees to make arrangements for an involuntary transfer upon notice by the facility that such transfer is necessary and agrees to accept physical custody of the resident at the time of transfer.
HEALTH SERVICES
ACKNOWLEDGEMENT OF RISK AND INFORMED CONSENT RELATING TO FALLS

As attorney-in-fact, responsible party or resident, I understand that the Resident may be at risk or is at risk for falls. I understand that interventions are or will be in place in an effort to decrease the risk of the Resident falling. I understand that interventions will be individualized based on the plan of care.

I understand even with the implementation of or the continuation of these interventions, the Resident may fall or continue to fall and that such falls may result in injury to or the death of the Resident. I understand that the staff cannot and will not be physically present with the Resident 24 hours per day, seven days a week. I also understand that the Resident’s family and I have been advised that we have the right to sit with the Resident at all times or to obtain and hire, at our expense, a sitter to be with the Resident while the Resident remains in the facility, and that due to the Resident being at risk for falls, we should employ private sitters for the Resident. I understand and acknowledge that I have the right to remove the Resident from the facility, having been notified that the Resident has fallen in the past and is at risk of falling in the future. I also understand that the facility and its staff cannot guarantee that the Resident will not fall in the future. I understand that the nursing staff is not providing any less care for the Resident, only that incidents such as falls may occur due to the Resident’s medical and mental condition as well as medications that the Resident’s physician may prescribe from time to time.

I understand that Federal law states that Residents have the right to be free from any physical or chemical restraint unless medically necessary as determined by the Resident’s physician. I also understand the facility cannot restrain a Resident for discipline or convenience and that restraints may only be used in circumstances in which the Resident has medical symptoms which warrant the use of restraints and that such decision is within the sole determination of the Resident’s physician. I understand that the facility will use the least restrictive restraint where use of said devices are indicated and prescribed by the Resident’s physician. I prefer that the Resident’s dignity and quality of life be respected and that the Resident not be restrained in a manner which would restrict freedom of movement unless, in the sole determination of the Resident’s physician, the physician deems otherwise.

My signature below constitutes my acknowledgement that I have read, that I fully understand and that I agree with the foregoing, all of which has been satisfactorily explained to me. I hereby make my request and give my unqualified authorization for the Resident to be admitted to or to remain a Resident of the facility, and I, on my own behalf and on behalf of the Resident, acknowledge and accept the risk that the Resident may fall and be injured or die as a result of falling while a Resident of the facility.

Signed: ___________________________ Resident’s Name: ___________________________

Relationship: ___________________________ Administrator/DON/RN

______________________________ Date ________________________________ Witness
RESIDENT'S RIGHTS AND RESPONSIBILITIES

NONDISCRIMINATION STATEMENT

The Facility welcomes all persons in need of its services and does not discriminate on the basis of age, disability, race, color, national origin, ancestry, religion, or sex. The Facility does not discriminate among persons based on their sources of payment.

CONSENT FOR TREATMENT

NURSING FACILITY SERVICES - By signing this Agreement, the Resident consents to the Facility providing routine nursing and other health care services as directed by the attending physician. From time to time, the Facility may participate in training programs for persons seeking licensure or certification as health care workers. In the course of this participation, care may be rendered to the Resident by such trainees under supervision as required by law. Consent to routine nursing care provided by the Facility shall include consent for care by such trainees.

Physician Services - The Resident acknowledges that he or she is under the medical care of a personal attending physician and that the Facility provides services based on the general and specific instructions of this physician.

The Resident has a right to select his or her own attending physician. If, however, the Resident does not select an attending physician, or is unable to select an attending physician, an attending physician may be designated by the Facility, or in accordance with State law.

The Resident recognizes and agrees that all physicians providing services to the Resident, including those designated by the Facility, are independent contractors. The Resident recognizes and agrees that such physicians are not associates or agents of the Facility, and that the Facility's liability for any physician's act or omission is limited.

The Resident shall be solely responsible for payment of all charges of any physician who renders care to the Resident in the Facility, unless the charges are covered by a third party payor.

RIGHT TO REFUSE TREATMENT - The Resident has the right to refuse treatment and to revoke consent for treatment. The Resident also has the right to be informed of the medical consequences of such refusal or revocation of consent, and to be informed of alternate treatments available. Where, in the opinion of the attending physician or by judgment of a court of law, the Resident is determined to be mentally incompetent to make a decision regarding refusal of treatment, the decision to refuse treatment may be made by a Legal Representative or other surrogate decision-maker, subject to State and Federal law.
• **Daily Rate** - The facility private pay daily rate is determined in part by the type of room assigned and the level of care provided to Resident. For this reason, the rate may change if the Resident moves to a different room. The Resident agrees to pay the Facility in advance for one month’s private daily rate. For each additional months stay, the Resident agrees to pay the Facility in advance on or before the tenth (10th) day of the month. Any unused advance payment shall be refunded if the Resident becomes covered by Medicaid or Medicare or leaves the facility before the end of the month. The Resident will be provided with a list of supplies and services included in the Facility’s daily private rate and those supplies and services which are not covered by the daily private rate for which the Resident will be separately charged. A detailed list of and charges for supplies and services not covered by the rate is maintained in the Business Office and is available for review during normal business hours.

• **Rate Adjustments** - The Facility may occasionally need to increase the daily rate or optional service charges. If this happens, the Resident shall receive written notice of the adjustment. If at any time the Resident’s condition requires the Facility to change the level of care, the Resident’s daily rate may be changed to the new daily rate for the new level of care without prior notice, unless notice is required by State Law or Regulation. When a notice of a rate adjustment is received, the Resident can choose to end this Agreement. Any rate increase shall be considered as agreed to by all parties when mailing. If the Resident does not agree to the rate increase, the Resident agrees to leave the Facility no later than the day before the rate increase becomes effective. If the Resident fails to leave by this date, the Resident shall be considered to have consented to the increase.

• **Private Insurance** - Even when there is private insurance coverage, the Resident remains primarily responsible for paying all Facility charges. All charges not covered by the third party payor are also the responsibility of the Resident; these non-covered charges include any coinsurance and/or deductible amounts required by the third party payor, to the extent allowed under Federal and State laws.

**APPLYING FOR MEDICARE / MEDICAID ASSISTANCE** - This Facility makes no guarantee of any kinds that the Resident’s care will be covered by Medicare, Medicaid, or any third party insurance or other reimbursement source. The Facility, its agents and associates are hereby released from any liability or responsibility for the Resident’s potential claim for any failure to obtain such coverage.

**MEDICAID ASSISTANCE:** With respect to applying for and receiving Medicaid (Title XIX) assistance, the Resident agrees to the following:

• **Communicating Asset Status / Applying Promptly for Benefits** - At some future date, the Resident’s assets may be reduced to a point where the Resident does not have sufficient monthly income to pay for the cost of care and services. In this case, the Resident agrees to inform the Facility immediately of the status of the Resident’s assets.

• **Qualifying for Medicaid Assistance** - If the Resident elects coverage under the Medicaid Assistance Program, the Resident agrees to act as quickly as possible to establish and maintain eligibility for Medicaid. These actions must include, but are not limited to, taking any and all steps necessary to ensure that the Resident’s assets are within the required limits and that these assets remain within allowable limits for Medicaid assistance.
By your execution of this Agreement and/or acceptance of service at the Facility, you and Responsible Party acknowledge, understand and agree that this Agreement includes a dispute resolution program for all claims and disputes between you and the Facility (except for monetary claims involving less than $25,000.00); that all claims and disputes covered by the dispute resolution program ("Dispute") will be resolved by binding ARBITRATION; that ARBITRATION is a complete substitute for traditional litigation; and that you and your Responsible Party waive your right to file a lawsuit in regard to a Dispute and to have any Dispute heard in a court by a judge or jury.

You and your Responsible Party further acknowledge that you have had an opportunity to question a representative of the Facility concerning the terms of this Admission Agreement and the contents of the Handbook and Resident Admission Video and that any questions you had have been answered to your satisfaction.
b. Allow the resident to participate in any activities within the scope of the resident’s mental and physical capabilities, as authorized by the attending physician; and the resident and/or legal guardian and/or responsible party release the facility from any responsibility for the resident during participation either within the facility or for any activity which takes the resident outside the facility.

c. Photograph the resident during planned activities with the understanding that these photographs may appear in the facility newsletter or local newspaper.

d. Deliver personal mail to the resident and assist with opening and reading mail as needed.

6. RULES AND REGULATIONS: Resident and/or legal guardian and/or responsible party shall abide by the rules and regulations as set forth by all contracting agencies with regard to charges, refunds, supplies, equipment, and medication.

7. RATE: The resident and/or legal guardian and/or responsible party jointly and severally agree to pay to the facility the rate of $________ per day for care and services to be rendered to the resident and shall pay $________ (the monthly rate) for one month in advance at admission and a like sum thereafter on the first of each month. If the resident is or ever shall receive governmental financial assistance, the resident or legal guardian hereby acknowledge that the governmental agency giving such financial assistance may adjust the monthly rate and the amount of the monthly rate for which such governmental agency is responsible, and the resident or legal guardian and responsible party hereby agree that when such government agency makes such adjustments, this agreement will then be automatically adjusted so that the resident or legal guardian and responsible party shall pay to the facility all portions of the monthly rate and any other sums for care and services and supplies furnished or rendered to the resident not paid by the governmental agency giving such financial assistance. If at any time or for any reason any governmental agency either denies payment to facility for care and services rendered and supplies furnished to the resident or requires the facility to repay any payments previously paid to the facility by such governmental agency for care and services rendered for supplies furnished to the resident, the resident and/or legal guardian and/or responsible party jointly and severally, shall pay to the facility an amount of money equal to all such payments denied or required to be repaid so that the facility shall receive all sums due and owing to it for care and services rendered to the resident at the monthly rate in effect at the time such care and services are rendered together with all supplies furnished to the resident, resident and/or legal guardian and/or responsible party, jointly and severally, shall pay all sums due to the facility at the above named address including the monthly rate and all sums for other services and supplies. Monties owed are due on the first day of each month and unless other arrangements are made, accounts which are not paid by the tenth of the month will be charged interest at the rate of ten percent (10%) per annum from the date of indebtedness until paid. Part of the consideration for entering into this agreement is the agreement of the legal guardian, in his capacity as legal guardian, and the responsible party, in his individual capacity, to be responsible for and accept the custody of the resident if required by the facility. The charges for all services or supplies will be itemized on the monthly billing. Any willful destruction of facility property will be charged by separate billing from the facility or directly from the contractor. No services provided are contingent upon contribution.

8. REFUNDS: Residents desiring to move shall receive a refund or any unearned portion of the monthly rate to which they are entitled upon request, provided all terms of this agreement have been met. All refunds will be made within 30 days following discharge.
DURATION OF AGREEMENT: Either party may, without cause, terminate this agreement on 30 day written notice. Such notice will not act as cancellation of financial responsibility until actual termination date of this agreement. This does not mean that the resident will be forced to remain in the facility against his will, but the facility would appreciate time for planning discharge so it will be less traumatic for the resident. The legal guardian or responsible party shall, upon termination hereof, subsequent to the notice provided for in Paragraph 7 be responsible for and accept custody of the resident.

10. PATIENT CARE POLICY: The resident or legal guardian and responsible party acknowledges that each of them has been provided with access to a copy of, have read, and do understand the facility's policies and each agrees to and shall be bound and abide by the terms and provisions thereof.

11. BED HOLD/READMISSION POLICY: The facilities’ bed hold policy is as follows:

a. The bed will be held for the resident during his/her absence from the facility as long as the resident and/or responsible party agrees to pay $40.00 (amount) per day and notified the Social Worker of the decision to hold the bed.

b. If the resident and/or family member or legal representative decides to discontinue payment or the State plan expires, all personal belongings, furnishings, etc., must be removed from the room.

c. Upon notice of plans for discharge from the hospital, completion of a therapeutic leave, or other placement outside the facility, the facility will make the first available bed open to the resident provided he/she requires the services provided by the facility.

"Should collection of any sums due this agreement be referred to an attorney or collection agency for collection, the resident, legal guardian and/or responsible party hereunder shall be personally, jointly and severally liable to pay all costs of collection including but not limited to attorney’s fees and expenses for the collection of any sums due hereunder."

_____________________________  ________________________________
DATE                              SIGNATURE OF RESIDENT

_____________________________  ________________________________
DATE                              SIGNATURE OF LEGAL GUARDIAN

_____________________________  ________________________________
DATE                              SIGNATURE OF RESPONSIBLE PARTY

_____________________________  ________________________________
DATE                              SIGNATURE OF FACILITY REPRESENTATIVE
Nursing Home
Admission Agreement

In consideration for the shelter, care and services to be afforded at Nursing Home, hereby agrees to pay the charges set forth in this Agreement and any additional charges for extra services, if applicable, subject to the following terms:

1. It shall pay, or direct the person legally responsible for . to pay the Per Diem Rate of $ and charges incurred by that are not covered by the Per Diem Rate by the tenth (10th) of the month following the month in which the charges were incurred. If any of these billings are not paid as of the tenth (10th) of the month following the month in which the charges were incurred, Nursing Home shall deem the account delinquent.

The Per Diem Rate covers room, meals, nursing services, medically related social services, certain social activities, and care and treatment ordered by a physician. All extra personal needs of , not regularly furnished as part of the Per Diem Rate shall be furnished by family or paid for as an extra charge.

2. The Per Diem Rate is based upon Nursing Home’s level of care charge structure and is subject to change. R. y and/or will receive prior written notice of any such change.

3. During the absence of for any reason, the regular charge herein shall apply until the room is released and all belongings are removed. F or , shall notify Nursing Home’s Social Service Department regarding whether ’s bed should be held, or whether should be discharged. If notice is received, ’s bed will automatically be held and charges will continue to accrue.

The State Medicaid Plan allows Residents twelve (12) days for therapeutic home leave every six (6) months, during which will be permitted to return and resume residence in Nursing Home. If is absent longer than the time allowed for therapeutic home leave, she will be readmitted to Nursing Home immediately upon the first availability of a bed in a semi-private room, provided requires the services provided by Nursing Home, and is eligible for Medicaid nursing facility services.

4. The Administrator shall have the right to remove any Resident from Nursing Home, after appropriate notice, when in her judgment it is in the best interest of the other Residents, for medical reasons as defined by or Nursing Home’s physician, or for failure to pay for her stay at Nursing Home.
POLICIES AND PROCEDURES FOR RESIDENTS

RESIDENT PRIORITY:

- All persons who are residents of Missouri, Nursing Home District, regardless of race, color, creed or financial status.
- All those persons who are residing with and are dependents of any tax-paying resident of Missouri, Nursing Home District.

ADMISSION PROCEDURES:

- No person shall be admitted or continued whose condition indicates the need for a type of service and care not available in this home. If at any time a residents condition becomes so serious as to require care not available in this home, the person will be transferred on the order of the attending physician and the responsible family member. The nursing home shall not accept or retain residents who are known to be destructive to themselves or property or who show hostility to or disturb others. Seriously disturbed mental residents will not be admitted or retained.

- A resident may be discharged due to mental, physical conditions or non-payment of charges.

- All residents admitted must be under the care of a physician who will visit them as needed in the nursing home. Each resident must be seen monthly for the first three months and every 60 days thereafter. You must have an admission history and physical examination completed no more that ten days prior to admission or within seven days after admission. You may have these services provided by your family doctor or the nursing home staff physician. Please notify the doctor of your choice before you are admitted so he/she will be aware of your move to the nursing home and be ready to receive our call for care instructions. Please remember it is your responsibility to contact the doctor to secure his/her services. You will be responsible for all charges made by him/her and these charges will be billed directly to you.

- TB Testing: Upon admission, each resident or family member will be asked to provide a TUBERCULOSIS TEST RESULT that has been done within the last 12 months. If such test results are not available at the time of admission, a chest x-ray may be required in order to rule out the presence of active TB. Otherwise, TB testing will be done within five working days at the family's expense. The Home adopts the Missouri Department of Health's recommendations, for example, the interpretation of TB tests, reporting of positive results, follow-up guidelines of positive tests and annual statements for Tuberculin reactors. These guidelines are set forth in our Policy & Procedure for Nursing.
The Resident or responsible party agrees to pay a daily rate of $______ and the facility will accept this arrangement in full consideration for care and services rendered. In addition to this resident/patient, there may be One or No additional Resident/patients occupying this room.

Other Charges

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Payment

Payment agreed to herein are to be made in advance of the services being provided by Nursing Home each month, except as otherwise agreed upon or by custom when third party payers are involved such as Medicaid, Medicare, or Other Insurance Companies. On the date of admission payment shall be made for the days remaining in the month. The responsible party hereby agrees to pay Nursing Home for any statements or portion of statement rendered to a third party which remains unpaid sixty days after date of billing.

Conditions Of Discharge Or Transfer

Nursing Home reserves the right upon ten days written notice except in the case of an emergency to discharge any resident/patient who: (a) is dangerous to himself or others, (b) is an active or in an acute stage of alcoholism, drug addiction, mental illness, or communicable disease, (c) is unduly disturbing, unduly noisy, objectionably untidy, noncooperative or destructive in behavior and action, (d) is in need of medical procedures, as determined by the staff nurse or physician, or services as determined by the Care Review Committee, Which can't be carried out in this facility, (e) fails to notify the administrator of Nursing Home of any change in method of payment, or (f) fails to meet contractual obligations stated herein.

The resident/patient or representative shall have the right at all times to voluntarily discharge herself or himself from the facility provided the person in charge of the facility is given proper notification in order that a proper transfer or discharge can be effected.

Reservation Of Accommodations

The facility will reserve accommodations in advance, for which agreements have been made and the agreed rate paid in advance for a mutual agreement upon period of time. In the event of residents/patients temporary absence, reservation of room shall be assumed to be for the period of advance payment, unless other arrangements are made with the administrator of the Nursing Home.

Rights And Responsibilities Of The Facility

The facility reserves the right to move any resident/patient from one room to another as is deemed necessary by the nursing staff or attending physician. The facility reserves the right to approve and limit the personal effects the resident/patient brings into the facility.
INSURANCE

This contract to provide services is with you, not your insurance company. We do not contract with insurance companies for any charges. We expect payment from the responsible party at the time the charges are due. Insurance companies do not always pay their clients in a timely fashion, however, your payment is due by the tenth of the month.

We will be happy to provide the necessary copies of billing documents needed by the responsible party to bill insurance claims. If you need assistance with filing claims, see the accounting department.

ROOM RESERVE POLICY

In the event that a resident is discharged to the hospital, his/her bed will be reserved and payment will be expected to be continued in order to hold the bed for his return. If you do not want to reserve the bed, you must release it by notifying Social Services, bookkeeper or administrator within 24 hours of discharge. Then, if it is later needed, you will have to wait for availability.

CONDITIONS OF DISCHARGE OR TRANSFER

reserves the right to discharge a resident who:

1. Is a danger to himself or others
2. Requires a medical treatment we cannot provide.
3. Fails to meet contractual obligations of payment.
4. Is uncooperative or destructive to people or facility.

The facility reserves the right to determine room assignments based on the needs and desires of each resident.

TERMINATION OF CONTRACT

Either party may terminate this agreement on 10 days written notice, otherwise, it will remain effective until a new agreement is executed, or the resident is discharged. This article shall not mean the resident will be forced to remain in the facility against his/her will for any length of time.

By signing below, I indicate I have read this Admission Contract, read all the attached authorizations, understand and have resolved any questions about the content, conditions, or terminology of the agreement. I freely consent to be legally bound by this agreement.

The undersigned agrees to pay the reasonable attorney fees of the event this account is not paid and is turned over to an attorney for collection.

Resident Name _________________________________

Resident or Responsible Party ___________________ Date __________
TO RELATION OR GUARDIANS

When entering a resident in the Nursing Home, all clothing and personal belongings should be marked before entering the home. After entering, all personal items should be checked at the Nurses' Station and marked. Personal laundry will be done at the Home on Monday, Wednesday, and Friday. The Nursing Home is not responsible for personal belongings that have not been checked and marked.

The Nursing Home Board has agreed that before any refund can be made, a 10 day notice must be given to the Nursing Home Business Office that the Resident is being moved.

Room rates are billed from the first of each month and are due by the tenth of the month.

Medications will be obtained from the pharmacy of the Resident and Families' choice, but in case of emergency in which medication would need to be started immediately, medication may have to be purchased at a pharmacy other than that of your choice.

Residents who are transferred to the hospital and plan to return to the Nursing Home will be billed the usual room rate in order to reserve the room.

Additional charges will be made for drugs and other supplies as used by the Resident. No medication will be given except on Physician's orders. Residents are not allowed to keep medication in their rooms unless there is a physician's order for them to do so. All medical items must be checked at the Nurses' Desk, whether they are non-prescription or prescription. Rooms are checked routinely and if any medications are found, they will be removed by the Administrator or Charge Nurse. This is done for the safety of all of our residents.

Please check at the Nurses' Station when bringing in food for a Resident. We will be happy to refrigerate any food that needs to be or put food in a proper container. Any food in a resident's room must be kept in a covered container. Some of our residents are on special diets and if we are informed of the special treats we are able to adjust their diets accordingly.

The relatives or guardian will be notified of any change in the Resident's condition. If the Resident's regular physician is unable to be reached, when necessary another licensed physician will be contacted.

Guest meals are available at a charge of $3.00 per meal.

If the Resident becomes uncooperative or unmanageable, arrangements will be made for transfer to a facility which will better meet the Resident's needs. Residents and families will be given a 30 day notice in this event.
In the above cases, the Facility will attempt to give the Resident/Representative as much advance notice of transfer or discharge as is practical.

**Right to Appeal Involuntary Transfer or Discharge**
If the Resident is involuntarily transferred or discharged, the Facility will notify the Resident/Representative of the Resident’s right to appeal the discharge under state and federal law.

**Resident Trust Monies Upon Discharge**
The Facility will return the Resident’s Trust Fund monies as soon as possible after discharge, and within the state mandated time, unless applied to an outstanding balance. If the monies are unclaimed after a period of time designated by state regulations, the Facility will give the money to the state.

**Section 14: Bed Holds**

At the time the Resident is to leave the Facility for a temporary stay in a hospital or for therapeutic leave, (or within 24 hours in case of an emergency transfer) the Resident/Legal Representative will be given a written copy of the Bed Hold Policy and may elect to hold open the Resident’s room and bed until the Resident returns. At this time, the Resident/Legal Representative will indicate in writing whether the Resident desires or declines the bed hold.

**Situations When the Bed May Not Be Held**
The Facility will not be required to hold the Resident’s bed if:

- The Resident/Legal Representative fails to request the bed hold according to the above procedure.
- Upon the discharge from the hospital, the Resident requires a higher level of care than can be provided by the Facility.
- The bed hold period expires and the Resident/Representative does not extend the bed hold using the above procedure.

**Charges for Bed**
Private-pay Residents and Medicare beneficiaries will be charged a basic room charge for each day of the bed hold. They will be notified of the rate at the time the Resident is temporarily discharged.

If the Resident is a Medicaid beneficiary and Medicaid agrees to pay for the bed hold, the Facility will notify the Resident of eligible Medicaid days and will bill Medicaid up to the maximum number of bed hold days covered by Medicaid. In addition, the Facility will also bill the Resident/Financial Representative for the Resident’s co-payment as applicable.

If the bed hold period exceeds the number of days covered by the Medicaid program, or if Medicaid coverage is unavailable for the bed hold, the Resident/Financial Representative may voluntarily choose to pay privately to hold the bed. The Medicaid resident shall have the right to return to the first available, appropriate, semi-private bed in the Facility. If the Resident fails or refuses to pay for any non-covered bed hold days, the Facility will not be required to hold the Resident’s bed, subject to applicable laws.
PAYMENT INFORMATION

DUE DATES & OBLIGATION TO PAY TIMELY - Facility charges for services provided shall be billed monthly to the Resident. These charges are due and payable by the tenth (10th) day of each month.

If payment is not received by the tenth (10th) day of each month, the account balance is considered past due or delinquent, and the Facility may add a late charge to the Resident's account. This late charge shall be assessed on the monthly balance at the lesser of the monthly rate of 1.5% (one and one-half percent) or the maximum amount permitted by law. This late charge does not alter any obligations of the Facility or Resident under this Agreement.

The Resident recognizes that the Facility does not offer credit or accept installment payments. The Facility's acceptance of a partial payment does not limit the Facility's rights under this Agreement.

FAILURE TO PAY - The Facility's due date for payments falls on the tenth of each month. If the Resident fails to make a required payment within twenty-one (21) days of the due date, the Facility may require the Resident to vacate the Facility.

If a Resident is required to vacate for failure to pay, the Facility shall provide advance notice as set forth in the Resident's Rights section of this Agreement. This notice shall be considered received either on the actual date of receipt or five (5) days after mailing, whichever occurs first.

FEE FOR RETURNED CHECKS - A service fee of $25.00 (twenty five dollars) or the actual fee charged by the bank, whichever is greater, will be charged for any returned check.

BED HOLDS

The Resident may need to be absent from the Facility temporarily for hospitalization or therapeutic leave. The Resident may request that the Facility hold open the Resident's bed during this time. This is known as a "bed hold." The Resident and a family member or legal representative shall be given notice of the bed hold option at the time of hospitalization or therapeutic leave.

MEDICAID RESIDENTS - If the Resident's care is paid under the Medicaid program, Medicaid may pay for a certain number of bed hold days.

If the Medicaid Resident's hospitalization or therapeutic leave exceeds the bed-hold period paid under the Medicaid program, the resident may request an additional bed hold period from the Facility by agreeing to pay the applicable daily rate during the additional bed hold period. Otherwise, the Resident shall be readmitted upon the first availability of a bed in a non-private room as long as the Resident: 1) requires the services provided by the Facility; and 2) is eligible for Medicaid nursing services.

PRIVATE AND MEDICARE RESIDENTS - Any Private or Medicare Resident may request a bed hold from the Facility. A Resident's private insurance may or may not pay for bed holds. The Medicare program does not reimburse for bed holds, however, if the Medicare Resident is also Medicaid eligible, some Medicaid programs may pay for a certain number of bed hold days. Otherwise, a Private or Medicare Resident requesting a bed hold must pay the Facility's private daily rate for the bed being held during the bed hold period.
BED HOLD AND READMISSION POLICY

It is our goal to accept all residents back to this facility who have been hospitalized or out on therapeutic leave. We readmit on a first come, first serve basis.

It is the policy of this facility to permit residents to retain their beds when they are discharged to a hospital or for therapeutic leave. The resident's bed will automatically be held unless the business office is notified to release the bed at discharge. The resident will be billed the daily room rate for the number of days out of the facility.

If you choose not to reserve the bed, we will readmit the resident in the first appropriate available bed.

It is your responsibility to contact the business office if this issue arises.

**NOTE: Medicaid makes no payment for nursing facility bed hold during hospitalization.

Resident___________________________________________

Responsible Party___________________________________

Facility Representative______________________________

Date______________________________________________
33. The Resident has a right to reasonable accommodation of individual needs and preferences except where the health or safety of the Resident or other Residents would be endangered.
34. The Resident has a right to freedom of choice of providers in accordance with applicable law and subject to the provider’s compliance with all applicable laws and reasonable rules and regulations of the Facility.

Section 12: Resident Funds, Valuables and Possessions

Resident’s Personal Funds
The Resident/Financial Representative may choose to deposit personal funds with the Facility. These funds will be deposited into a designated trust account maintained by the Facility in accordance with federal and state requirements. Every Resident’s funds in excess of $50.00 will be kept in an interest-bearing account as required by law. The Facility will give the Resident/Financial Representative periodic account statements as required by law.

Resident’s Valuables and Possessions
The Facility strongly discourages the keeping of valuable jewelry, papers, large sums of money, or other items considered to be of value in the Facility. The Facility will make reasonable efforts to safeguard the Resident’s property/valuables, which the Resident/Representative chooses to keep in Resident’s possession but cannot guarantee that items will not be lost or taken. The Resident/Representative agrees to inform the Facility of all valuable property upon admission, and at any time new items of value are added to resident’s possession. Upon admission, a detailed inventory of the Resident’s possessions will be done.

Resident’s Personal Property Upon Discharge
The Facility will attempt to reasonably safeguard the Resident’s non-monetary personal property and belongings left in the Facility, to the extent required by law. The Facility will dispose of any non-monetary personal property and belongings that remain unclaimed fourteen (14) days after Resident’s discharge from the Facility.

Section 13: Transfer and Discharge Rights

Transfer Within the Facility
The Resident/Representative understands that the Facility may find it necessary and/or appropriate (usually for medical reasons) to change the Resident’s room or roommate during the Resident’s stay at the Facility. If this occurs, the Facility will provide reasonable notice to the Resident/Representative in advance of any room or roommate change, unless an emergency requires that an immediate change be made.

*If you are being placed in a portion of the building which is a certified skilled area, these beds are intended for temporary placement and you may be asked to move to a non-certified area of the building when your level of care no longer necessitates remaining in that area.*
NOTICE OF TEMPORARY PLACEMENT

Resident Name ___________________________________________ Date _____________________

You are being placed in a portion of the building which is a certified skilled area. These beds are considered for temporary placement and you will be asked to move to a non-certified area of the building when your level of care no longer necessitates remaining in that area.

If you have questions regarding such a room change, please contact the facility social worker, or the facility administrator.

By signing this form, you agree to move to a room in a non-certified area when upon review you no longer meet the Medicare skilled criteria for coverage.

YOU HAVE THE RIGHT TO APPEAL THIS ACTION. You may contact our facility representative for further information OR you may contact the STATE LONG-TERM CARE OMBUDSMAN regarding your appeal rights.

Verification of Receipt of This Notice

This is to confirm that I have received advance notice on ________________________________.

__________________________________________
Resident/Responsible Party

__________________________________________
Facility Representative

lc111
Medicare.

The Facility does participate in the Medicare program. If the Resident is a beneficiary under Part A or Part B insurance and the nursing services or ancillary services or supplies ordered by a physician are covered by such insurance, then the Facility or other provider will bill the covered services or supplies to the Medicare program. Coverage for Medicare Part A is determined by:

a. a three night hospital stay
b. admission to the facility within 30 days of a three night hospital stay
c. your requirement of skilled nursing or rehabilitative services that must be delivered by professional or technical personnel, based on resource utilization (the RUGS system) established by Medicare.
d. number of skilled Medicare Part A days available to you

The Resident is responsible for and shall pay the co-insurance or deductible amounts under Part A or B. The Facility shall accept payment in full from the Medicare Intermediary only those services deemed to be covered under the Medicare A or Medicare B program. Non-covered services are the responsibility of the Resident.

Resident acknowledges that to qualify for Medicare Part A may require moving into a certified bed in the facility. Also when discharged from Part A the resident must move out of the certified bed or continue to be billed the Medicare rate.

Required notices and consents for Medicare will be presented to you for signature.

Managed Care Organizations.

At his time this facility is not authorized as a provider for any managed care organizations. Should you wish to enroll in one, please notify the facility to determine how enrollment may affect your stay.
Exhibit 36: Authorizing Transfer Within Nursing Home

qualified for Medicaid benefits) not paid by the Medicaid Program, the Medicare program or the Veterans Administration shall be the responsibility of Resident and not the Facility, unless otherwise provided by law.

5. **Special Orders.** The Facility shall not provide Resident any medicines, treatments or special diets except as ordered by the attending physician, the Facility medical Director or other legally authorized Facility staff member.

6. **Equipment.** The Facility will provide the Resident with such equipment as may be required under the Minimum Standards. Any other special equipment not otherwise covered by any third party reimbursement program which is ordered by Resident’s attending physician will be supplied at extra charge. Payment for any special equipment shall be the responsibility of Resident.

7. **Hospital Transfers.** The Facility will arrange for transfer of Resident to a hospital when such transfer is ordered by the attending physician or by another physician, or in the event of an emergency and if the attending physician is not reasonably available. Resident shall be responsible for payment of transportation charges and other costs of such transfer not paid by the Medicaid program, the Medicare program or the Veterans Administration. Unless Resident or Guardian/Conservator directs the Facility otherwise, Resident and/or Guardian/Conservator consent to Resident’s transfer to any hospital at which Resident’s attending physician has staff privileges, or to any hospital at which any other physician of Resident has staff privileges, or, if Resident’s care at the Facility is being paid for under a contract with the Veterans Administration, to any Veterans Administration hospital.

8. **Bed-Hold Policy.** In the event Resident shall be transferred to a hospital or go on a therapeutic leave, the Facility agrees to permit the Resident to return to the facility at any time during the bed-hold period as set out in Exhibit A provided that the Resident’s needs can be met by the Facility.

9. **Valuables.** The Facility shall not be responsible for any money, valuables, or personal effects brought into the Facility by Resident, relatives, or friends unless delivered to the custody of the Facility’s Administrator for safekeeping.

10. **Disclaimer.** In dealing with Resident, the Facility will exercise reasonable care in light of Resident’s condition and to the extent lawfully required under the Act. However, the Facility is in no sense an insurer of Resident’s welfare or safety, and assumes no liability as an insurer. The Facility shall not be responsible in any way for the care of Resident at any time Resident is on leave outside the premises of the Facility.

11. **Room and Roommate Transfers.** The Facility reserves the right of room and roommate transfer at its discretion and consistent with the health and welfare of Resident, provided that any notice required by law shall be given to Resident.

12. **Resident’s Rights and Advance Directives.** The Facility has delivered, and Resident hereby acknowledges receipt of copies of this Agreement, Exhibit B entitled “Resident Rights” and Exhibit C entitled “Advance Directives.”
3. The Administrator reserves the right to transfer the resident, or to transfer a new roommate into any assigned room, if necessary. Nursing Home shall promptly notify all of any proposed change in room or roommate, except in emergency situations or as otherwise required by Federal or State statute or regulation. All Residents will be placed in a room with another Resident unless arrangements have been made for a one (1) bedroom unit.

5. Any Resident, after admission to Nursing Home, who willfully destroys property, harasses or disturbs other Residents to the extent that such conduct constitutes a nuisance, or threatens suicide, shall be considered to have breached the rules and regulations of Nursing Home, and may be subject to discharge after appropriate notice.

7. Nursing Home may be discharged or dismissed from Nursing Home who willfully misrepresents, intentionally conceals or omits material facts relating to eligibility for admission to Nursing Home.

11. Nursing Home shall not be responsible for clothing, jewelry, money or other valuables retained by Resident. Valuables may be submitted to Nursing Home's Administrator or Social Service designee for safekeeping. Nursing Home will not be responsible for bridgework, false teeth, eyeglasses, prostheses or other like items retained by Resident while in Nursing Home. Nursing Home reserves the right to refuse to accept certain valuable items for safekeeping.

12. Upon departure, all belongings left by Resident shall be removed from the room and held in safekeeping at Nursing Home for thirty (30) days. After thirty (30) days, the Administrator may dispose of such belongings.

13. Residents shall at no time possess any unauthorized drugs, medications, firearms or alcoholic beverages or bring said items into Nursing Home.

14. A copy of the Resident Rights and Responsibilities is attached hereto as Exhibit B and is incorporated herein by reference. Resident acknowledges having been fully informed, both orally and in writing, of her rights and responsibilities and agrees to the terms therein. All Residents will be advised promptly in writing of any and all changes in the statement of Residents’ Rights and Responsibilities.

16. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri.
BILLING INFORMATION AND AUTHORIZATION TO BILL

The Resident is admitted under the terms of this Admission Agreement with the following payor source: (Check all that apply.)

☐ Private  ☐ Medicare  ☐ Medicaid  ☐ Veterans Administration  ☐ Hospice

AUTHORIZATION

I certify that the information given by me in applying for payment under Title XVIII of the Social Security Act (Medicare), or private insurance, is correct. I authorize any holder of medical or information about me to release to the Social Security Administration, or Intermediaries or Carriers, or private health insurance company, any information needed for a Medicare Claim, or private health insurance claim. I request that payment of authorized benefits be made on my behalf.

I authorize this Facility to bill any insurance or third party carrier for deductibles and/or co-insurance payments on my behalf, or for other benefits covered under my private health insurance.

I authorize payment of medical benefits to ________________________________ for services provided.

(Name of Facility)

I authorize Facility to request and be named Payor on my Social Security checks.

MAIL

I authorize the Facility to handle my mail as follows: (Check one box only.)

☐ All mail to be given directly to the resident.

☐ Forward all of the resident’s mail to: ________________________________

☐ All mail may be opened and read to the Resident.

☐ Give personal mail to the Resident; forward business mail to: ________________________________

ADMISSION AGREEMENT SIGNATURES

The signatures on this page refer to the information throughout the entire Admission Agreement and includes the language of the Agreement, Transfer and Discharge Information, the Duration, Term and Scope of Agreement, Resident Care Agreement which includes the Resident’s preference for Physician and Pharmacy and various consents and acknowledgments of notification, the Financial Agreement, a copy of Resident’s Rights, Resident’s Legal Rights, Authorization to Bill Resident Trust Fund, should the Resident choose, and Advance Directive Acknowledgment. Signatures on this page reflect agreement to, and receipt of, all information contained within the Admission Agreement.

(Resident’s Signature) (Date) (Resident’s Designated Party) (Date)

(Relationship) (Street Address) (City/State/Zip Code) (Telephone)

(Facility Representative) (Date)
D. Additional charges:

1. **Bed-hold charge.** In the absence of the Patient from the Nursing Facility, a daily bed-hold charge (in accordance with the Bed-Hold policy provided in Section IV of this Agreement) will be made until the personal effects of the Patient are removed from the Nursing Facility or a stop bed-hold agreement is signed.

2. **Expenses incurred for health and welfare of Patient.** The Patient will be billed for and will pay promptly those charges for ancillary services, supplies, and special equipment that are not included in the basic rate, but which the Patient’s attending physician or the Nursing Facility determine, in their discretion, to be necessary for the health and welfare of the Patient. To the extent possible, the Nursing Facility will notify the Patient in advance that such charges will be incurred. Where such services or supplies are provided by third parties, such as medical attention by a physician or ambulance service to a hospital, the Patient may be billed by the appropriate party.

3. **Property repair or replacement.** Should the Patient damage or destroy property of the Nursing Facility, beyond normal wear and tear, the Patient shall pay for the repair of or replacement of the property, as the case may be.

E. Timely Payment:

1. Payment to the Nursing Facility for services provided under this Agreement is due by the tenth (10th) of each month.

2. Failure of the Patient to pay the Nursing Facility by the tenth (10th) of each month shall be sufficient grounds for the Nursing Facility to discharge the Patient. The discharge of the Patient shall be effective thirty (30) days after the Patient receives a discharge notice from the Nursing Facility.

3. The Patient agrees to the following Assignment of Income to the Nursing Facility or the Patient Representative grants the Nursing Facility the following personal Guarantee as evidenced by his or her signature below:

   a. **Assignment of Income:**

   By my signature, I hereby assign all rights to such of my income from whatever source derived, as it exists now or as it may exist in the future, to the Nursing Facility as is necessary for payment of all charges incurred relating to my care. This obligation shall include the payment of reasonable attorney fees if this obligation is placed into the hands of an attorney for collection.

   Signature of Patient or Durable Power of Attorney
OR

b. Personal Guarantee:

1. By my signature, I hereby personally guarantee all obligations of Patient under this Agreement, including but not limited to the payment of all charges billed by the Nursing Facility relating to the care of the Patient. This obligation shall include the payment of reasonable attorney fees if this obligation is placed into the hands of an attorney for collection.

Signature of Patient Representative

F. Management of Personal Funds.

1. The Patient has the right to manage the Patient’s own financial affairs. The Patient is not required to deposit personal funds with the Nursing Facility.

2. If the Patient decides to deposit personal funds with the Nursing Facility, the Patient will provide the Nursing Facility with written authorization on Attachment C, and
   a. the Nursing Facility will not commingle those funds with the Nursing Facility’s funds;
   b. the Nursing Facility will place the funds in an interest-bearing account if the funds exceed $50;
   c. the Nursing Facility will provide the Patient with an individualized financial report quarterly, annually, and upon the Patient’s request; and
   d. the Nursing Facility will abide by all applicable rules and regulations related to the management of Patient funds.

IV. NURSING FACILITY POLICIES AND PROCEDURES

A. Physician instruction. The Patient is under the care of his or her personal physician. The Nursing Facility shall not be liable for any acts or omissions in following the instruction of said physician as long as appropriate care is exercised by the staff of the Nursing Facility.

B. Emergency services. If the Patient’s personal physician is not available in an emergency, a staff physician of the Nursing Facility will be called and all related charges for the staff physician’s services will be paid by the Patient.
Payments

This facility participates in the Missouri Medicaid, Medicare programs and accepts private insurance payments. Should the facility discontinue participation in the above programs, you will be given 30 days advance notice.

Monthly Statements.
The facility will mail monthly statements to the Resident or responsible party on or about the 1st calendar day of the month. The statement will reflect the charges for room and nursing care for the month and charges for ancillary and supplies for the past month. Payments are due upon receipt of the Statement and no later than the 10th of the month.

Late Charges and Cost of Collection.
We do not extend credit nor accept payment in installments. Any statements not paid within thirty days of the date of the statement are subject to a late charge of (1 1/2 %) per month (18% per year). The late charge is added to the statement and the Resident is obligated to pay any late charges. In the event that the Facility initiates any legal action or proceedings to collect payments due from the Resident under this agreement, Resident or Responsible Party shall be responsible to pay all attorney’s fees and associated costs incurred in pursuing the enforcement of the Resident’s financial obligations under this Agreement.

Modification of Charges.
The Facility may from time to time change the amount of any of its charges or how, when the charges are computed, billed or become due. The Facility will provide 30 days advance written notice of these changes.

Obligations of Resident’s Estate and Assignment of Property.
This Agreement shall operate as an assignment, transfer, and conveyance to the Facility of so much of Resident’s Property as is equal to any outstanding unpaid obligations of the Resident based on this Agreement. This assignment shall be an obligation of the Resident’s estate and may be enforced against the Resident’s estate. This assignment shall apply whether or not the Resident is occupying the Facility at the time of death.
Admission Agreement

Introduction
This is a legal document for admission to , a skilled nursing facility. This document creates rights and obligations for each person or party signing the agreement. Please read the agreement carefully and ask for clarification as needed. You may at your expense have the document reviewed by your legal representative or advisor prior to signing.

References to the Parties
We believe the Agreement will be more easily understood if where practical, personal pronouns are used when referring to the parties involved.

References to “we”, the “Facility” and to “our Facility” represent

References to “you” and “your” are references to any person signing this document as the Resident.

Signature of this document may be that of a responsible party, legal representative, or the Resident.

_____ Legal Representative.
An individual who, under independent legal authority, such as court order has authority to act on the Resident’s behalf. Example, a guardian, conservator, and the holder of a Durable Power of Attorney or General Power of Attorney executed by the Resident and notarized or witnessed. Documents evidencing a person’s Legal Representative status must be provided to us to keep in our files. If the court has appointed the person as guardian or conservator, then that person must sign the Agreement.

_____ Responsible Party.
An individual who voluntarily agrees to become obligated for the care and treatment of the Resident. Such person is bound by the terms of this agreement. If said person has access to the Resident’s funds and assets then person is obligated to pay the terms of services and supplies from such funds and assets.
Responsible party or legal representative shall assist in the preparation, completion, and submission of Resident’s application for Medicaid or other benefits if applicable. Failure to assist timely in the in the application of benefits may result in discharge as non-payment. In the event Resident applies for Medicaid benefits, arrangements may be made for the Facility to become representative payee for any social security or other income sources in an amount not to exceed the IM62 provided by the State.

Signing this agreement as legal representative or responsible party, you are not personally liable for the Resident’s account from any funds other than the Residents. Misappropriation or failure to pay the Resident’s account will be considered negligence and will be reported to the proper authorities. As legal representative or responsible party, you have the right to participate in the care planning process and we agree to notify you when there is: 1) an incident needing physician intervention and/or injury to the Resident, 2) significant change in the Resident’s mental, physical, or psychosocial status, 3) a need to alter treatment significantly. You are also entitled to receive all notices required to be sent to the Resident by law or this agreement.

A. Identification of Parties

Resident ________________________________

Facility ________________________________

Legal Representative ________________________________
Title ________________________________

Responsible Party ________________________________
Relation ________________________________
ATTACHMENT A - FINANCIAL AGREEMENT

BY SIGNING THIS AGREEMENT, THE RESIDENT AND HIS/HER DESIGNATED OR RESPONSIBLE PARTY OR ANY OTHER SUCH PERSON WITH LEGAL ACCESS TO THE RESIDENT’S INCOME STREAM OR FINANCIAL RESOURCES AVAILABLE FOR USE TO PAY FOR SERVICES RENDERED BY THE FACILITY DOES HEREBY AGREE TO PAY FOR THE SERVICES DESCRIBED AND THE FACILITY DOES HEREBY AGREE TO PROVIDE AND ACCEPT PAYMENT FOR THE DESCRIBED SERVICES. IN THE EVENT THAT THE PAYMENT SOURCE IS TO BE OR SHALL BECOME MEDICAID OR MEDICARE, THEN THIS AGREEMENT SHALL NOT CONSTITUTE AN AGREEMENT FOR PAYMENT BEYOND THE SCOPE OF RESIDENT’S PORTION OF PAYMENT FOR SERVICES UNDER EITHER OF THE AFOREMENTIONED PROGRAMS.

I. Room, Board, and Nursing Care:

Private Pay Resident - A resident is considered private pay when no State or Federal program is paying for the resident’s room and board. A private pay resident may have private insurance or another third party which pays all or some of his/her charges. The resident will be provided with a list of current private pay daily room rates, supplies and services included in the Facility’s daily private rate and those supplies and services which are not covered by the daily private rate for which the resident will be separately charged. The resident shall receive notice prior to a daily room rate change according to the laws of this State, however, in no event less than 30 days.

Medicare Resident - A resident’s room, board, and nursing care is paid for by Medicare when the resident is entitled to Medicare benefits and meet the Federal requirements for Medicare Part A services. On admission, the resident will be provided with a list of supplies and services paid for by the Medicare program, and those supplies and services not paid for by the Medicare program and for which the resident will be charged, including the daily co-insurance rate. Residents who no longer qualify for Medicare A benefits and who remain in the Facility will become Private Pay Residents, unless they become certified for Medicaid.

Medicaid Resident - A resident’s room, board and nursing care are partially paid for by Medicaid when certified by the State Medicaid Agency. Medicaid residents will be required to pay a portion of the daily rate as designated by the State Medicaid Agency. A resident may remain in the Facility for as long as he/she is certified eligible for the Medicaid program, or for as long as any share of cost owed by the resident is paid as due. A resident who remains in the Facility after Medicaid coverage has expired, or has been retroactively terminated, or denied certification, must pay the Facility charges as a Private Pay Resident. On admission, the resident will be provided with a list of supplies and services paid for by the Medicaid program, for which the resident may not be charged, and those supplies and services not paid for by the Medicaid program for which the resident will be charged. The resident’s co-payment is established by the State Medicaid Agency and may change according to their guidelines. Failure to pay the Facility the resident’s share of cost may result in discharge and notification of State and Federal authorities.

2. If not approved for Medicaid or Medicare, or if approval is denied for any reason, the resident will be retroactively billed to the date of denial, or date of admission, which ever is applicable, at the private rate schedule listed on the Facility’s “Private Pay Services and Charge Sheet”.

3. Nursing supplies will be billed according to the published list in the business office. This list may not be comprehensive and charges may be made from time to time.

4. The Facility will bill for these services according to the Facility’s prescribed billing procedure. All payments shall be due and payable at the Facility by the first of each and every month. Sums not paid by the tenth (10th) of the month shall bear a FINANCE CHARGE at the maximum ANNUAL PERCENTAGE RATE allowed by law. Additionally, the Facility will be entitled to its reasonable costs, including attorney’s fees, expended in collection of delinquent accounts.

5. The Facility shall inform the resident in writing before, or at the time of admission, and periodically during the resident’s stay, of services available in the Facility and of charges for those services, including any charges for services not covered under Medicaid or Medicare or by the Facility per diem rate. All bills for services and information related to changes in charges are to be mailed to:

__________________________  ______________________
(Name)                       (Street Address)

__________________________  ______________________
(City/State/Zip)              (Telephone)
**Private Payment.**

The present private pay rate for the room selected is [insert rate]. Should you move to another type of room the amount may change based on the current charges for that room at that time.

Payments will be made one month at a time and one-month in advance. Charges for supplies and non-covered services for the previous month will appear on the current month’s bill.

The Facility does not require you to remain in private pay status for any period of time. We request that you notify us two months in advance of your intention to apply for Medicaid so that we may assist you in some of the paper requirements. Should you become eligible for Medicaid assistance your payer source will be converted to Medicaid and the regulations of that program will prevail. If you pay for an item or service as a private pay Resident, but the Medicaid program later determines that during that time you were eligible for Medicaid payment for that service, then we shall refund the private daily rate. However, you are responsible for paying all co-payments, co-insurance, deductibles, patient paid amounts (surplus) and charges for non-covered items.

**Medicaid Payment.**

We participate in the Missouri Medicaid program as a provider of skilled nursing care and services. Eligibility for this program is determined through Division of Aging and Family services. It is the Resident’s responsibility or the Responsible or Legal Party’s responsibility to apply and provide the necessary documents to become eligible for this program in a timely fashion. Failure to assist timely in the application process may result in the discharge of the Resident for non-payment.

Medicaid currently pays for nursing services, activities, social services, bed and linens, incontinence supplies, meals and snacks, and routine personal hygiene items. Pharmacy items are covered if in the State plan.

Non-covered items are the Resident’s responsibility and are listed on our rate sheet.

Changes in the Medicaid Program in the future may change the items and services covered under this Agreement.
The Baby Boomer’s Guide to Nursing Home Care

This comprehensive consumer guide gives practical advice to nursing home residents and their families, based on thousands of real-life situations handled successfully by the authors. The book covers all important topics, including: choosing a nursing home; paying for nursing home care under Medicare and Medicaid; nursing home admissions; quality of care; health care decisionmaking; resolving problems with nursing homes. The book is written in plain language and presented in a reader-friendly format. Authors Eric Carlson and Katharine Bau Hsiao, both attorneys with National Senior Citizens Law Center, have 30+ years of combined experience in aging and nursing homes, and they are nationally respected experts in long-term care and elder law. $13.45+S/H.

20 Common Nursing Home Problems—and How to Resolve Them

NSCLC’s new guide explains 20 practices—some illegal—common to nursing homes, then gives detailed instructions on how residents and their family members can take action to get the type of high-quality care that residents deserve.

This guide is available in print for $9.95+S/H, or as an online download for $7.95, from www.nsclc.org.

Order Form

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Subtotal

Shipping and Handling (see chart below)

Grand Total

Shipping & Handling Fees

Order Total ............................................ Add
Up to $20 ................................................. $4
$21 to 50 ................................................. $5
$51 to $125 ............................................. $8
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$251 to $1,000 ......................................... $15

Two Ways To Order:
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Washington, DC 20005
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Questions? Call Christy Ross,
202-289-6976 x.211 or e-mail nsclc@nsclc.org.

NAME

ORGANIZATION

ADDRESS

CITY, STATE ZIP

PHONE

E-MAIL
The National Senior Citizens Law Center (NSCLC) advocates for the rights of elderly people, especially those who live in poverty. Our attorneys played a key role in winning passage of the federal Nursing Home Reform Law and have promoted its implementation and enforcement ever since. They are experts in Medicaid, Medicare Part D, long-term care consumer protections, Social Security, SSI and other topics. NSCLC has recovered lost benefits and improved access to vital safety net programs for millions of Americans.

How a nation cares for its elders affects the quality of life for everyone, young and old. The National Senior Citizens Law Center works for:

- quality health care through Medicaid and Medicare;
- adequate retirement income through Social Security and Supplemental Security Income;
- quality nursing homes and assisted living facilities for those who need institutional support; and
- access to justice to enforce laws protecting elders and other Americans.

NSCLC trains attorneys and community groups to strengthen advocacy for elders in local communities throughout the country. NSCLC publishes three acclaimed newsletters on legal issues affecting the elderly poor and provides technical assistance to legal services programs, area agencies on aging, and other groups funded under the Older Americans Act.

Visit our website at www.nsclc.org for more information about our programs and services. Due to limited resources, NSCLC cannot provide legal assistance for individual cases.