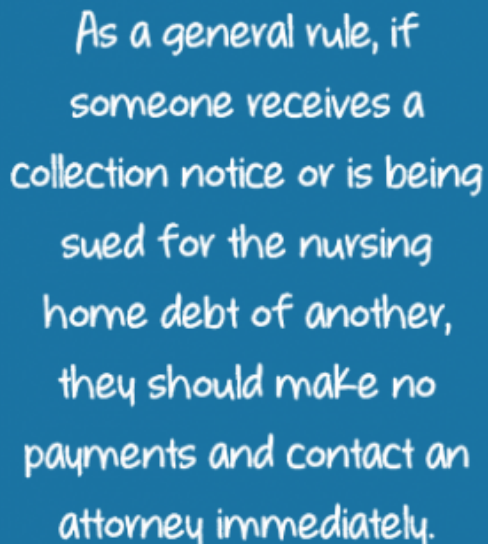


# Nursing Home Debt: Who is a responsible party?



As a general rule, if someone receives a collection notice or is being sued for the nursing home debt of another, they should make no payments and contact an attorney immediately.



By Jeff Lilly, staff attorney

Care decisions for aging loved ones can be fraught with emotion and stress. The search for high quality care, respect, and safety often feel overwhelming for all those involved. Unfortunately, this may be exacerbated by the exorbitant cost of nursing home or long-term skilled care in our country. According to the Consumer Financial Protection Bureau, the annual median cost of a single room in a nursing home was \$108,405. This is over \$9,000 per month. Nursing home costs have risen 60% since 2004 and have outpaced growth in other consumer and medical care prices.

For some family members, these stressors continue even after their loved one dies. Many nursing homes and skilled care facilities are big businesses with high profit

margins. To keep these margins, they can be aggressive and even abusive pursuing the collection of debt accrued by a resident who passed away. Medicaid and Medicare usually cover some, but not all, expenses - and mistakes in coverage can happen. Co-insurance has limits, as does the ability of most patients to pay out of pocket. This can mean many nursing home residents pass away with sizable nursing home debt, commonly tens of thousands of dollars or more.

So the question is - what happens when a loved one passes away with nursing home debt?

As is often the case, what should happen and what does are sometimes very different things.

Too often in our country, third parties are wrongfully being held responsible for their relatives' and friends' nursing home debt. And the financial consequences - like credit score impact, wage garnishment, and bankruptcy - are detrimental. As a country and certainly as advocates for low-income Americans, we are giving this issue a closer look than ever. Sadly, the COVID-19 pandemic shined a bright light on many distressing practices involving our oldest citizens.

Nursing homes and the debt collection companies they hire may use an array of sophisticated tactics to try to collect the nursing home debt of a deceased patient from a spouse, child, other relative, or even a friend.

Depending on the facts of a case, some of these may be more valid than others and include:

- **Married Persons Obligations of Support:** In Ohio, we have a statute in the Ohio Revised Code statute called "Married persons' obligation of support" which

states “(e)ach married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support as far as the spouse is able.” This cause of action has been used in Ohio to try to hold a spouse liable for a deceased patients’ nursing home debt. To be successful, the nursing home’s pleadings will need to set out facts that align with the statute. Further, the nursing home may need to file a claim on the decedent’s estate first with failure to do so most likely to result in a dismissal.

- **Responsible Party Clauses:** Upon admission, some nursing homes make a practice of having a third party personally guarantee in writing any nursing home debt that accrues. This can often be required as a condition of admission and the paperwork is usually a part of a larger stack that many people unwittingly sign without fully reading or understanding the contents. Or perhaps worse, some may sign believing their loved one otherwise will not receive placement or adequate care. The Nursing Care Reform Act and the federal regulations that support it, however, prohibit any facility that receives Medicare or Medicaid payment from engaging in this practice.
- **Claims of Fraudulent Conveyance or Financial Malfeasance:** Some nursing homes or their debt collection agencies may allege there has been a fraudulent conveyance of the deceased resident’s assets or funds. This often happens when a trusted third party like a child or friend was given access to the decedents’ funds to facilitate care. Claims that these assets have been misappropriated are often made without adequate proof or may not fully meet the definition of a fraudulent conveyance. Some lawsuits may use boilerplate language that can easily be defeated when it’s proven that the trusted party wasn’t holding assets or used them to pay for legitimate care needs for the decedent.

As a general rule, if someone receives a collection notice or is being sued for the nursing home debt of another, they should make no payments and contact an attorney immediately. There may be several tactics and legal defenses that will

ultimately prevent liability. One thing not to do is ignore communications, because that could result in a default judgment. In some cases, unknowing defendants report the documents they received seemed so far-fetched they believed them to be a scam and threw them in the trash. Even in these extreme circumstances, it's best to err on the side of caution and ask an expert. Ohioans also have the option of reporting these actions to the Ohio Department of Health, the Ohio Attorney General's office, or the [Consumer Financial Protection Bureau](#). Consumer advocates will also continue working hard on this issue through education, litigation, and participation in joint letters encouraging nursing homes and debt collectors to reexamine their practices.

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