

# Nursing Facility Contracts and Home Health Care

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## THE CALL .....



## If you get nothing else out of this presentation ....

- Download Eric Carlson's paper *20 Problems – and How to Solve Them*. Better yet, buy a dozen to keep on hand for your clients. Either way go to [www.nsclc.org](http://www.nsclc.org)
- Add the Center for Medicare Advocacy to your bookmarks. [www.medicareadvocacy.org](http://www.medicareadvocacy.org)
- If you do a lot of work in this area, invest in a treatise like *Long Term Care Advocacy* by Eric Carlson, published by Matthew Bender (LexisNexis Bookstore)

## Don't forget it's a Contract

- Relationships between the nursing home and their residents are understood only through an overlay of federal, state, and the common law. You need to be mindful of the impact of each element on the contract.
- Why is this important?
  - No contract can override a law designated to protect the public. *Restatement (Second) of Contracts §178(1) (1981)*
  - Compliance with the law is critical for a facility's continued licensure and participation in the Medicare and Medicaid Programs.

## Governing Law – Federal

- Nursing Home Reform Act 1987
  - 42 U.S.C. Sec 1395i-3 (applying to Medicare certified facilities)
  - 42 U.S.C. Sec 1396r (applying to Medicaid certified facilities)
- Interpreting regulations are in 42 C.F.R.
  - See especially Sec 483.25 *Resident's Right to Quality Care*

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## Governing Law – State

- **Licensure and Regulation**
  - Texas Health and Safety Code §222.0255 and 242.301 *et seq.* [§ 242.502 *Residents Rights* is Appendix I]
  - Texas Human Resources Code §32.
- **Rights of the Elderly**
  - Texas Human Resources Code §102.001 *et seq.*
- **Texas Administrative Code**
  - Title 40 §§ 19.703, 19.802, 19.901, 19.1001 and 19.1901 *Resident's Right to Quality Care in Texas*

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Title search: Nursing Facility Contracts and Home Health Care

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[Elder Law Primer: A Toolkit, plus Nursing Facility and Home Health Care Contracts](#)

First appeared as part of the conference materials for the  
16<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
"Nursing Facility and Home Health Care Contracts: An Overview of Basic Rights and Obligations"