

ATTACHMENTS

E.D.N.Y. - Bklyn
23-cv-8186
Donnelly, J.
Bloom, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of July, two thousand twenty-four.

Present:

Eunice C. Lee,
Myrna Pérez,
Sarah A. L. Merriam,
Circuit Judges.

Leonard W. Houston, as Beneficiary of Estate of Luis Houston Sr,
Deceased,

Plaintiff-Appellant,

v.

24-375

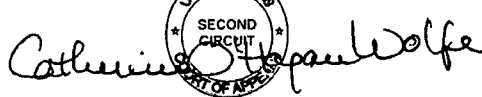
Highland Care Center, Inc., Skill Nursing Home,

Defendant-Appellee.

Appellant, proceeding pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e)(2)(B).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court


A circular seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
LEONARD W. HOUSTON,

Plaintiff,

— against —

HIGHLAND CARE CENTER, INC.,

Defendant.
----- X

MEMORANDUM DECISION AND
ORDER

23-CV-8186 (AMD) (LB)

ANN M. DONNELLY, United States District Judge:

The plaintiff brings this *pro se* action under 42 U.S.C. § 1983 alleging that the defendant, Highland Care Center, Inc., violated federal and state law by committing financial abuse and providing substandard care. The plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 is granted. For the reasons stated below, the complaint is dismissed.

BACKGROUND

The plaintiff brings this action as the sole beneficiary of his late father's estate against Highland Care Center, Inc. ("Highland"), a private nursing home care facility located in Jamaica, New York.¹ (ECF No. 1 at 3–4.) The plaintiff alleges that his late father, who resided at Highland from April 1997 until his death on January 19, 2000, was "a victim of continuous

¹ On April 13, 1999, the plaintiff initiated a similar action on behalf of his father against Highland, *Houston v. Highland Care Center, Inc.*, No. 99-CV-2047. On June 8, 1999, Magistrate Judge Roanne Mann ruled that the plaintiff could not represent his father without counsel, but gave the plaintiff time to retain counsel, or to file an application for *pro bono* counsel. Judge Eugene N. Nickerson denied the plaintiff's application to appoint counsel; the Second Circuit dismissed the plaintiff's appeal of that decision. On October 27, 2000, Judge Nickerson dismissed the case because the plaintiff did not appear at a September 2000 hearing and stopped communicating with the court. Twenty-two years later, on September 19, 2022, the plaintiff filed a Rule 60(b)(6) motion seeking to overturn Judge Nickerson's Order. The case was reassigned to me, and I denied the motion as untimely on October 4, 2022. The Second Circuit dismissed the plaintiff's appeal because it lacked an arguable basis either in law or in fact.

financial abuse and substandard care.” (*Id.* at 3, 6, 7.) Specifically, the plaintiff asserts that the defendant “sought and secured a financial guarantee by a form of deceit,” and “‘double-bill[ed]’ and . . . force[d] member(s) under duress to make a separate payment(s) for an item(s) or service(s) already covered by the Medicaid *per-diem* rate.” (*Id.* at 8.) The plaintiff further alleges that the defendant was “certified for participation in both the Medicare and Medicaid programs” and “required a resident’s family member under deceit and duress to become financially responsible for nursing facility expenses.” (*Id.*) The plaintiff seeks injunctive relief and money damages. (*Id.* at 20.)

LEGAL STANDARD

At the pleadings stage of the proceeding, the Court must assume the truth of “all well-pleaded, nonconclusory factual allegations” in the complaint. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 123 (2d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). A complaint must plead sufficient facts to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). *Pro se* complaints are held to less stringent standards than pleadings drafted by attorneys and the Court is required to read the plaintiff’s *pro se* complaint liberally and interpret it as raising the strongest arguments it suggests. *Erickson v. Pardus*, 551 U.S. 89 (2007); *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 191–93 (2d Cir. 2008). A district court must dismiss an *in forma pauperis* action if the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §§ 1915(e)(2)(B).

DISCUSSION

I. Pro Se Claims on Behalf of the Estate

A plaintiff has the right to proceed *pro se* in civil actions. See 28 U.S.C. § 1654 (“In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”). However, a person, like the plaintiff, who has not been admitted to the practice of law may not represent anyone other than himself. *Lattanzio v. COMTA*, 481 F.3d 137, 139 (2d Cir. 2007) (noting that Section 1654 “does not permit unlicensed laymen to represent anyone else other than themselves” (citation and internal quotation marks omitted)); *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998) (explaining “because *pro se* means to appear for one’s self, a person may not appear on another person’s behalf in the other’s cause . . . [but] must be litigating an interest personal to him”); *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997) (“[A] person ordinarily may not appear *pro se* in the cause of another person or entity.”).

An administrator or executor of an estate “may not proceed *pro se* when the estate has beneficiaries or creditors other than the litigant.” See *Pridgen*, 113 F.3d at 393. However, if the administrator is the sole beneficiary and creditor of the estate, he may proceed *pro se* on the estate’s behalf. See *Guest v. Hansen*, 603 F.3d 15, 21 (2d Cir. 2010) (“[T]he administrator and sole beneficiary of an estate with no creditors may appear *pro se* on behalf of the estate.”). Here, the plaintiff states that he is the sole beneficiary of his father’s estate (ECF No. 1 at 4), but does not allege that the estate has no creditors. Accordingly, the plaintiff may not prosecute the action *pro se*. See *Orvioto v. United States*, No. 8-CV-01, 2008 WL 4424374, at *2 (E.D.N.Y. Sept. 29, 2008) (dismissing an action prosecuted *pro se* on behalf of the plaintiff’s father’s estate for failure to obtain counsel where he did not establish that there were no other creditors of the estate and the court had issued the plaintiff several warnings to obtain counsel).

II. Section 1983 Claims

Furthermore, in order to maintain a § 1983 action, a plaintiff must allege that “the conduct complained of [was] committed by a person acting under color of state law,” and “deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States.” *Pitchell v. Callan*, 13 F.3d 545, 547 (2d Cir. 1994). Section 1983 does not extend to harms caused by private individuals or private organizations. The Supreme Court has held that “the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful.” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quotations omitted). Although the under-color-of-state-law requirement can be applied to private individuals and institutions in certain limited circumstances, such as where the private institution is engaged in a “public function” or performs conduct that is “fairly attributable to the state,” *id.* at 51, these exceptions are narrow.

The defendant is not a state actor simply because it participated in Medicare and Medicaid programs. A private entity does not become a state actor merely by (i) performing under a state contract, (ii) by accepting state or federal funds, or (iii) because it is subject to state regulation. *Cranley v. Nat’l Life Ins. Co. of Vt.*, 318 F.3d 105, 112 (2d Cir. 2003) (“A finding of state action may not be premised solely on the private entity’s creation, funding, licensing, or regulation by the government.”); *Blum v. Yaretsky*, 457 U.S. 991 (1982) (finding that private nursing homes were not state actors, even though they accepted Medicaid funds and were subjected to Medicaid regulations); *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982) (“Acts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts.”); *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1974) (“The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State.”). Thus, the defendant’s participation in and regulation

by federal and state programs does not convert it into a state actor subject to liability under 42 U.S.C. § 1983 to convey federal question jurisdiction.

Even if the plaintiff had a viable claim under 42 U.S.C. § 1983—and he does not—the claim is barred by the statute of limitations. “Section 1983 actions filed in New York are . . . subject to a three-year statute of limitations.” *Hogan v. Fischer*, 738 F.3d 509, 517 (2d Cir. 2013); *see also Okure v. Owens*, 816 F.2d 45, 47 (2d Cir. 1987) (“[T]he proper limitation to apply to all section 1983 claims in New York is three years.”), *aff’d*, 488 U.S. 235 (1989). The plaintiff’s claims arise from acts that occurred at least 23 years ago. (See ECF No. 1 at 3, 6.)

III. Claims Under Medicare-Medicaid Anti-Fraud and Abuse Statute

The plaintiff brings claims under the Medicare-Medicaid Anti-Fraud statute 42 U.S.C. § 1320a-7b. Federally funded programs, including Medicare and Medicaid, are subject to the federal health care fraud statute, *see* 42 U.S.C. § 1320a-7b, but this statute “does not provide individuals with the right to bring a cause of action to enforce its provisions.” *Disame v. Kantharia*, No. 23-CV-7102, 2023 WL 6879614, at *3 & n.4 (E.D.N.Y. Oct. 18, 2023) (quoting *Mercer v. Westchester Med. Ctr.*, No. 21-CV-8268, 2021 WL 5567617, at *3 (S.D.N.Y. Nov. 29, 2021)); *see also Riddles v. Parakh*, No. 08-CV-2373, 2008 WL 4298318, at *2 (E.D.N.Y. Sept. 16, 2008) (finding that the federal health care fraud statute does not grant individuals the right to bring private legal action for claims related to Medicaid or Medicare fraud). The plaintiff therefore has no right to bring Medicare or Medicaid fraud claims.

IV. Claims Under 42 C.F.R. § 483

Nor does the plaintiff have a right of action under 42 C.F.R. Part 483, which provides federal regulations related to requirements for residents in long-term care facilities. These regulations do not provide a private cause of action. *Udoinyion v. Gouverneur Health Care*

Sves., 18-CV-1055, 2018 WL 4539652, at *2 (S.D.N.Y. Sept. 20, 2019) (citing *Schneller v. Crozer Chester Med. Ctr.*, 387 F. App'x 289, 293 (3d Cir. 2010)).

V. Claims Under State Law

Finally, the Court declines to exercise supplemental jurisdiction over any potential state law claims. *See Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (“Subsection (c) of § 1367 confirms the discretionary nature of supplemental jurisdiction.” (internal quotations and citation omitted)).

VI. Leave to Amend

The Second Circuit has held that leave to replead should be liberally granted to *pro se* litigants. *See Grullon v. City of New Haven*, 720 F.3d 133, 140 (2d Cir. 2013) (“[A] *pro se* complaint generally should not be dismissed without granting the plaintiff leave to amend at least once”); *see also Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010). “[B]ut amendment should be denied where the complaint gives no ‘indication that a valid claim might be stated.’” *McKie v. Kornegay*, No. 21-1943, 2022 WL 4241355, *3 (2d Cir. Sept. 15, 2022) (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000)). In this case, granting leave to amend would be futile. Accordingly, the case is dismissed.

CONCLUSION

The plaintiff's complaint, filed *in forma pauperis*, is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal.

Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to enter judgment, close this action, and mail a copy of this Order to the plaintiff.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
January 26, 2024

A-12

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

LEONARD W. HOUSTON

as Beneficiary of Estate of Louis Houston, Sr., Deceased

Plaintiff-Appellant

-against-

HIGHLAND CARE CENTER, INC.

Skill Nursing Home,

Defendant-Appellee

Case No. 24-375

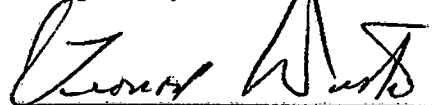
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**NOTICE OF APPEAL TO
UNITED STATES SUPREME COURT**

Notice is hereby given that **LEONARD W. HOUSTON**, Plaintiff, *pro-se* appeals to the United States Supreme Court from the **ORDER** of the United States Court of Appeals for the Second Circuit that the Appellant, proceeding *in forma pauperis* is hereby ORDERED that the motion is DENIED, and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact," as pursuant to 28 U.S.C. § 1915(e) (2)(B), entered on the 12th day of July 2024, is annexed hereto as Exhibit A.

Dated: **July 15, 2024**

Respectfully submitted



LEONARD W. HOUSTON, *pro-se*
Plaintiff-Appellant

148 Deer Court Drive
Middletown, NY 10940-6867
(845) 343-8923

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
LEONARD W. HOUSTON,

Plaintiff,

-against-

HIGHLAND CARE CENTER, INC.,

Defendant.
----- X

JUDGMENT
23-CV-8186 (AMD) (LB)

A Memorandum, Decision, and Order of the Honorable Ann M. Donnelly, United States District Judge, having been filed on January 26, 2024, dismissing plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii); certifying pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith; denying *in forma pauperis* status for the purpose of an appeal, *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962); it is

ORDERED and ADJUDGED that plaintiff's complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii); that pursuant to 28 U.S.C. § 1915(a)(3), any appeal would not be taken in good faith; and that *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Dated: Brooklyn, NY.
January 30, 2024

Brenna B. Mahoney
Clerk of Court

By: /s/Jalitza Poveda
Deputy Clerk

A-11

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

REC'D IN PRO SE OFFICE
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LEONARD W. HOUSTON

as Beneficiary of Estate of Louis Houston, Sr., Deceased

Plaintiff,

-against-

HIGHLAND CARE CENTER, INC.

Skill Nursing Home,

Defendant.)

Docket No. 23-cv-08186-AMD

BROOKLYN OFFICE

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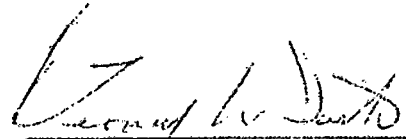
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

FILED

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

Notice is hereby given that **LEONARD W. HOUSTON**, hereby appeals to the United States Court of Appeals for the Second Circuit from the **MEMORANDUM DECISION** and **ORDER** of the District Court for the Eastern District of New York that the Plaintiff's Complaint filed in *forma pauperis* is dismissed, pursuant to 28 U.S.C. § 1915(c) (2)(B)(ii)), entered in this action on **January 26, 2024**, are annexed hereto as **Exhibit A**.

Dated: **January 31, 2024**



LEONARD W. HOUSTON, po-se
Plaintiff

148 Deer Court Drive
Middletown, NY 10940-6867
(845) 343-8923

EXHIBIT A

ATTACHMENT

RESIDENTS'

BILL OF RIGHTS

NURSING HOMES AND HEALTH RELATED FACILITIES

RESIDENT'S RIGHTS

State Hospital Code Sections 730.17 and 740.14

230.17 Patients' rights: (a) The operator of a nursing home or health related facility shall, in consultation with patients/residents, establish written policies regarding the rights and responsibilities of patients/residents and shall be responsible for development of and adherence to procedures implementing such policies. These policies and procedures shall be given to patients/residents or their guardian, next of kin, or representative agency or agency or lawful representative and each member of the facility's staff. They shall also be posted conspicuously in a public place in the facility and made available to the public. The staff of the facility shall be trained and instructed in the implementation of these policies and procedures. The patients/residents' rights, policies and procedures shall ensure that, at least, each patient/resident is:

- (1) is fully informed, as evidenced by the patient/resident's written acknowledgment, prior to or at the time of admission and during stay, of these rights, and is given a statement of the facility's rules and regulations, and an explanation of the patient/resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and privacy of other patients;
- (2) is fully informed, and is given a written explanation, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered by sources of third-party payments or one covered by the facility's basic per diem rates;
- (3) is informed verbally and in writing, at the time of admission and again at the time of transfer for any reason, of the facility's bed reservation or reservation policy;
- (4) is assured of adequate and appropriate medical care, is fully informed, by a physician of the medical condition unless medically contraindicated (as documented by a physician in his medical record), is given the name, address and telephone number of the physician in charge of the care and is afforded the opportunity of consultation with the physician and prompt treatment, to refuse to participate in experimental research, and to refuse medication and treatment when being fully informed of and understanding the consequences of such actions;
- (5) is transferred or discharged only for medical reasons, or for his welfare or that of other patients/residents, or for nonpayment for his stay (except as prohibited by sources of third-party payment), is given reasonable advance notice to secure timely transfer or discharge, and is free to be responsible (as provided in interpretation of the content of his medical record) by a physician of his decision to transfer or discharge, and to be free to be responsible (as provided in interpretation of the content of his medical record) by a physician of his decision to transfer or discharge, and to be free to be responsible (as provided in interpretation of the content of his medical record) by a physician of his decision to transfer or discharge;
- (6) is encouraged and assisted, throughout his period of stay, to exercise his rights as a patient/resident and as a citizen, and to file and may voice grievances, has a right of action for damages or other relief for violations or infringements of his rights to admission and proper treatment and care established by any applicable statute, rule, regulation or contract, and to request changes in policies and procedures in the facility and to request changes in the care of his person, from admission, interpretation, contract, discharge or transfer;
- (7) may participate in the established patients/residents' council, as described in Section 414.9 of this Part;
- (8) is instructed in both the facility's and the department's complaint procedures verbally and in writing, and is provided with the name, address and telephone number of the officer established by the department to accept complaints and of the State Office for the Aging Ombudsman Program;
- (9) may express his personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his behalf through the facility except the written delegation of this responsibility to the facility for any period of time in accordance with these laws;
- (10) is free from sexual and physical abuse, and free from chemical and physical restraints except those necessary and authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others or to be immobilized by an emergency, in which case the restraints may only be applied by a licensed nurse who shall act in writing to the director of the facility regarding the use of restraints and, in the case of use of chemical restraints, a physician shall be consulted within 24 hours;
- (11) is assured security in storing personal possessions and confidential treatment of his personal and medical records, and may require or refuse their release to any individual outside the facility, except, in the case of his transfer to another health care institution, as required by law or third-party payment contract;
- (12) is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
- (13) is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
- (14) may associate and communicate privately with persons of his choice, may join with other patients/residents or individuals within or outside of the facility to work for improvements in patient care, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician in his medical record);

EXHIBIT B

ATTACHMENT



Highland Care Center, Inc.

91-31 175th STREET
JAMAICA, NEW YORK 11432

DESIGNATED REPRESENTATIVE

Residents are encouraged to appoint a Designated Representative to assist or act in behalf of a Resident, and will receive all information that is also given to the Resident. The Designated Representative is kept fully informed of the Resident's care program, treatments, medications, etc. The Designated Representative may not give effective consent to treatment or refuse treatment. A Designated representative may be chosen by the Resident, or if unable to do so, by the family or other concerned parties. Resident's Name LOUIS HOUSTON, SR.

XX I wish to appoint (Name) LEONARD W. HOUSTON, Attorney-in-Fact
residing at 148 Deer Court, Middletown, New York 10940
as my Designated Representative.

 I do not wish to appoint a Designated representative at this time.

Date April 23, 1997

LOUIS HOUSTON, SR.

By: Leonard W. Houston, Attorney-in-Fac
Resident [Signature]

Date _____

Witness - State Position

 We, the undersigned appoint _____
residing at _____
to be the Designated representative

Date _____

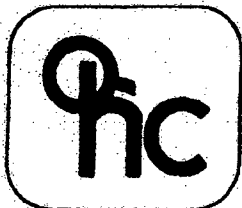
Name and Relationship to Resident

Date _____

Name and relationship to Resident

Date _____

Witness-Name and Title of Staff Member



QUEENS HOSPITAL CENTER

New York City Health And Hospitals Corporation
82-68 164th Street, Jamaica, New York 11432
(718) 883-3000

Affiliated with
Mount Sinai School of Medicine

9/2/94

To whom it may concern —

Mr. Louis Houston is a
patient at the Springfield (Conche)
Clinic of Queens Hospital Center.
He suffers from a heart condition
(ischemic heart disease), decreased
hearing and impaired mobility.
Please waive any deposits
due to his frail condition.
Thank you

CLIFFORD FEINER, MD
#175616

Long Term Care Facilities and Home Health Agencies

42 C.F.R. Parts 483 & 484

PART 483 — CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

Subpart A — [Reserved.]

Subpart B — Requirements for Long Term Care Facilities

- § 483.1 Basis and scope.
- § 483.5 Definitions.
- § 483.10 Resident rights.
- § 483.12 Admission, transfer and discharge rights.
- § 483.13 Resident behavior and facility practices.
- § 483.15 Quality of life.
- § 483.20 Resident assessment.
- § 483.25 Quality of care.
- § 483.30 Nursing services.
- § 483.35 Dietary services.
- § 483.40 Physician services.
- § 483.45 Specialized rehabilitative services.
- § 483.55 Dental services.
- § 483.60 Pharmacy services.
- § 483.65 Infection control.
- § 483.70 Physical environment.
- § 483.75 Administration.
- § 483.80 Special requirements for skilled nursing facility agreements with swing-bed hospitals.

Subpart C — [Reserved.]

Subpart D — Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

- § 483.150 Deemed meeting of requirements, waiver of requirements.
- § 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.
- § 483.152 Requirements for approval of a nurse aide training and competency evaluation program.
- § 483.154 Nurse aide competency evaluation.
- § 483.156 Registry of nurse aides.
- § 483.158 FFP for nurse aide training and competency evaluation.

Subparts E-H — [Reserved.]

Subpart I — Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

- § 483.400 Basis and purpose.
- § 483.405 Relationship to other HHS regulations.
- § 483.410 Condition of participation: Governing body and management.
- § 483.420 Condition of participation: Client protections.
- § 483.430 Condition of participation: Facility staffing.
- § 483.440 Condition of participation: Active treatment services.
- § 483.450 Condition of participation: Client behavior and facility practices.
- § 483.460 Condition of participation: Health care services.
- § 483.470 Condition of participation: Physical environment.
- § 483.480 Condition of participation: Dietetic services.

Subpart A — [Reserved.]

Subpart B — Requirements for Long Term Care Facilities

§ 483.1 Basis and scope.

(a) *Basis in legislation.* (1) Sections of the Act 1819 (a), (b), (c), and (d) provide that —

(i) Skilled nursing facilities participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements (see section 1819(d)(4)(B)) if they are necessary for the health and safety of individuals to whom services are furnished in the facilities.

(2) Sections 1919 (a), (b), (c), and (d) of the Act provide that nursing facilities participating in Medicaid must meet certain specific requirements.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

§ 483.5 Definitions.

For purposes of this subpart —

Facility means, a skilled nursing facility (SNF) or a nursing facility (NF) which meets the requirements of sections 1819 and 1919 (a), (b), (c), and (d) of the Act. "Facility" may include a distinct part of an institution specified in § 440.40 or § 440.150 of this chapter, but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150(c) of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of a larger institution. For Medicare, a SNF (see section 1819(a)(1)), and for Medicaid, a NF (see section 1919(a)(1)) may not be an institution for mental diseases as defined in § 435.1009.

§ 483.10 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) *Notice of rights and services.* (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident or his or her legal representative has the right —

(i) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within 24 hours; and

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days' advance notice to the facility.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(4) The resident has the right to refuse treatment, and to refuse to participate in experimental research; and

(5) The facility must —

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of —

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i) (A) and (B) of this section.

(6) The facility must inform each resident 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 Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes —

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(8) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(9) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) Notification of changes. (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is —

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a).

(ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is —

(A) A change in room or roommate assignment as specified in § 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Protection of Resident Funds.* (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Management of personal funds. Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)-(8) of this section.

(3) Deposit of funds. (i) Funds in excess of \$50. The facility must deposit any residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) Funds less than \$50. The facility must maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(4) Accounting and records. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available through quarterly statements on request to the resident or his or her legal representative.

(5) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits —

(i) When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(6) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(7) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(8) Limitation on charges to personal funds. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(d) *Free choice.* The resident has the right to —

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Privacy and confidentiality.* The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when —

- (i) The resident is transferred to another health care institution; or
- (ii) Record release is required by law.
- (f) *Grievances*. A resident has the right to —
 - (1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and
 - (2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.
- (g) *Examination of survey results*. A resident has the right to —
 - (1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be made available for examination by the facility in a place readily accessible to residents; and
 - (2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contract these agencies.
- (h) *Work*. The resident has the right to —
 - (1) Refuse to perform services for the facility;
 - (2) Perform services for the facility, if he or she chooses, when —
 - (i) The facility has documented the need or desire for work in the plan of care;
 - (ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
 - (iii) Compensation for paid services is at or above prevailing rates; and
 - (iv) The resident agrees to the work arrangement described in the plan of care.
- (i) *Mail*. The resident has the right to privacy in written communications, including the right to —
 - (1) Send and promptly receive mail that is unopened; and
 - (2) Have access to stationery, postage, and writing implements at the resident's own expense.
- (j) *Access and visitation rights*. (1) The resident has the right and the facility must provide immediate access to any resident by the following:
 - (i) Any representative of the Secretary;
 - (ii) Any representative of the State;
 - (iii) The resident's individual physician;
 - (iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);
 - (v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);
 - (vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);
 - (vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and
 - (viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(k) *Telephone.* The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(l) *Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(m) *Married couples.* The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(n) *Self-Administration of Drugs.* An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined that this practice is safe.

(o) *Refusal of certain transfers.* (1) An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate —

(i) A resident of a SNF from the distinct part of the facility that is a SNF to a part of the facility that is not a SNF, or

(ii) If a resident of a NF from the distinct part of the facility that is a NF to a distinct part of the facility that is a SNF.

(2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicaid benefits.

§ 483.12 Admission, transfer and discharge rights.

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EASTERN DISTRICT OF NEW YORK - CIVIL DOCKET SHEET –**

Houston, et al. v. Highland Care Center, Inc.

Civil Docket For Case #: 1:23-cv-08186-AMD-LB

Date Filed: 10/31/2023A1

MEMORANDUM DECISION AND ORDER –

Hon. ANN M. DONNELLY, *United States District Judge*

Houston v. Highland Care Center, Inc.

Docket No. 23-CV-8186 (AMD)(LB)

Dated: January 26, 2024.....A-3

JUDGMENT –

Houston v. Highland Care Center, Inc.

Docket No.: 23-CV-8186 (AMD)(LB)

Dated: January 30, 2024 A-10

**NOTICE OF APPEAL TO UNITED STATES
SUPREME COURT–**

Leonard W. Houston, Pro-se, Plaintiff-Appellant

Leonard W. Houston, as Beneficiary of Estate of Louis Houston, Sr., Deceased, v.

Highland Care Center, Inc., Skill Nursing Home

Docket No. 24-375

Dated: July 15, 2024

Date Filed: July 18, 2024 (*Brooklyn Office*) A-11

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APPEAL, IFP, NPROSE, PROSENEF

U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:23-cv-08186-AMD-LB

Houston et al
Assigned to: Judge Ann M Donnelly
Referred to: Magistrate Judge Lois Bloom
Cause: 42:1983 Civil Rights Act

Date Filed: 10/31/2023
Date Terminated: 01/30/2024
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Leonard W Houston
as Beneficiary of Estate of Louis Houston
Sr, Deceased.

represented by **Leonard W Houston**
148 Deer Court Drive
Middletown, NY 10940
845-343-8923
Email: lenny.houston@yahoo.com
PRO SE

V.

Defendant

Highland Care Center, Inc.
Skill Nursing Home

Date Filed	#	Docket Text
10/31/2023	<u>1</u>	COMPLAINT against Highland Care Center, Inc., filed by Leonard W Houston. (Attachments: # 1 Civil Cover Sheet, # 2 Electronic Consent) (CV) Modified on 11/3/2023 (CV). (Entered: 11/03/2023)
10/31/2023	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Leonard W Houston. (CV) (Entered: 11/03/2023)
10/31/2023	<u>3</u>	Clerk's Notice Re: Consent. A United States Magistrate Judge has been assigned to this case and is available to conduct all proceedings. In accordance with Rule 73 of the Federal Rules of Civil Procedure, Local Rule 73.1, the parties are notified that if all parties consent, the assigned Magistrate Judge is available to conduct all proceedings in this action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to this Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent. Any party may withhold its consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent. The form may also be accessed at the following link: https://img.nyed.uscourts.gov/files/forms/MJConsentForm.pdf (CV) (Entered: 11/03/2023)
11/03/2023	<u>4</u>	Pro Se Consent to Electronic Notification by Leonard W Houston (CV) Modified on 11/6/2023 (CV). (Entered: 11/06/2023)
01/26/2024	<u>5</u>	MEMORANDUM DECISION AND ORDER. The plaintiff's complaint, filed in forma pauperis, is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. The Clerk of Court is directed to enter judgment, close this action, and mail a copy of this Order to the plaintiff. Ordered by Judge Ann M. Donnelly on 1/26/2024. (DG) (Entered: 01/26/2024)
01/30/2024	<u>6</u>	CLERK'S JUDGMENT: that plaintiffs complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii); that pursuant to 28 U.S.C. § 1915(a)(3), any appeal would not be taken in good faith; and that in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). Signed by Deputy Clerk, Jalitza Poveda, on behalf of Clerk of Court, Brenna B. Mahoney, on

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		1/30/2024.(cop. 1/30/2024) (JP) (Entered: 01/30/2024)
02/09/2024	7	NOTICE OF APPEAL as to 5 Order on Motion for Leave to Proceed in forma pauperis, by Leonard W Houston. (VJ) Modified on 2/12/2024 (Entered: 02/12/2024)
02/09/2024		APPEAL FILING FEE DUE re 7 Notice of Appeal Payment in the amount of \$605.00, can be made in person to the clerks office, or mailed in or paid online with the event <i>Civil Case Appeal Filing Fee</i> . (VJ) (Entered: 02/12/2024)
02/12/2024		Electronic Index to Record on Appeal sent to US Court of Appeals. 7 Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (VJ) (Entered: 02/12/2024)