

Involuntary Transfer and Discharge

The threat of transfer or discharge from a nursing home can be both frightening and stressful for residents and their families. Too often, a facility may respond to a resident's difficulties, increasing need for care, or repeated questions or complaints from family members by attempting to transfer or discharge the resident. The Nursing Home Reform Law of 1987 protects residents from involuntary transfer and discharge. Contact the Long-Term Care Ombudsman in your area for more information about legal rights and protections and for assistance in working with the facility.

Transfer and Discharge

Transfer is movement from a certified institution to another institutional setting that assumes legal responsibility for the resident's care. **Discharge** is movement from a certified institutional setting to a non-institutional setting. After discharge, the facility is no longer legally responsible for the resident's care.

What the Law Says About Involuntary Transfer/Discharge

The Nursing Home Reform Law of 1987 prohibits nursing homes from transferring or discharging a resident unless it can establish that one of the permissible reasons for transfer/discharge exist.

Those reasons are:

- the nursing home cannot provide adequate care for the resident;
- the resident's health has improved to the point that he or she no longer needs nursing home care;
- safety of individuals in the facility is endangered;
- the health of others in the facility would otherwise be endangered;
- the resident has failed, after reasonable and appropriate notice, to pay for care (although the facility cannot evict a resident who is waiting for Medicaid eligibility and should work with other state agencies to obtain payment if the resident's money is being held by a family member or other individual); or
- the facility ceases to operate.

Before proposing a transfer/discharge, a facility must identify and try to meet the resident's individual medical, nursing, and psychosocial needs, by formulating and implementing an individualized care plan designed to meet those needs. Many of the permissible reasons for transfer or discharge can be addressed through assessment and care planning, making transfer or discharge unnecessary. Because most nursing homes provide fairly complex care for sick residents, it is rare that the facility cannot find a way to provide adequate care for the resident or to keep the resident and others safe with the use of a good assessment and care plan.

Furthermore, universal health precautions should be in place in every nursing home that protect the health of residents and others and prevent the spread of infection. The nursing home assesses the care needs of prospective residents upon initial admission. Once a resident has been accepted by the nursing home, the nursing home should find ways to provide safe and appropriate care.

Notification

If a resident is to be transferred or discharged, the facility must record the reason for transfer in the resident's clinical record, and notify the resident and the resident's family member, guardian, or legal representative in writing.

The notice must include:

- the reason for the transfer or discharge,
- the location to which the resident will be moved,
- the date of transfer or discharge, and
- information about the resident's right to appeal to the state concerning the transfer or discharge,
- with the name, address, and telephone number of the state long term care ombudsman.

The location the resident will be moved to must be specific, appropriate, available, and agreeable to taking the resident.

Time Limits

The law requires that a nursing home must inform the resident and the resident's family member, guardian or legal representative about a transfer or discharge at least thirty (30) days in advance.

Preparation Before Transfer or Discharge

The nursing home must provide discharge planning and sufficient preparation and orientation to residents being transferred/discharged. The law guarantees the right of the resident (and/or family member) to participate in planning care and treatment, which should include choosing a new place to live. The nursing home should also prepare an orientation, such as a visit to the new home, and assure a safe arrival. The resident should know where he or she is going. The facility should also inform the new residence about the resident's needs, preferences and habits. Lastly, the nursing home should ensure possessions aren't lost in the moving process, and any personal funds are given to the resident or transferred to a new account.

Bed Hold and Readmission

The Nursing Home Reform Law gives Medicaid recipients the right to return to their facility after they have been out of the facility due to hospitalization or therapeutic leave. Some states will pay to hold a bed for Medicaid residents who are temporarily absent. If a Medicaid recipient loses a bed -- either because the state does not pay to hold the bed, or they have exceeded the state's

bed hold period, readmission rights permit him or her to return to the next available bed in a semi-private room in the nursing home. Residents are entitled to notice about bed-hold and readmission rights twice-- upon admission and at the time of transfer. A facility's bed hold policy must be consistent with state regulations.

Additional Rights

The Nursing Home Resident Protection Amendment of 1999 requires that nursing homes continue to provide care for Medicaid residents already living in the facility even if the nursing home chooses to cease participation in Medicaid.

- A resident has the right to participate in planning care and treatment or changes in care and treatment.
- A resident and their family member or legal representative must receive notice before the resident's room or roommate in the facility is changed.
- A resident can refuse transfer from a portion of the nursing home that is certified at one level of care to another portion with different certification.

Complaints and Appeals

A resident has the right to appeal the facility's decision to transfer/discharge him or her. The transfer or discharge notice must include information about how to request a hearing, the resident's right to use legal counsel or other spokesman at the hearing, and the mailing address and telephone number of the State long-term care ombudsman. A complaint may also be filed with the state survey agency.

Protection Against Inappropriate Transfer and Discharge

Contact the Long-Term Care Ombudsman program if you are concerned about plans for transfer or discharge from a nursing home. The ombudsman is empowered by law to advocate for nursing home residents. Also, find out if there is a family council at the nursing home. When families meet to share concerns and organize a consumer voice, this is a source of power for negotiation with the facility's administration.

Go to theconsumervoice.org/get_help to find an ombudsman in your area.

