

# CONSUMER TIPS ON NURSING HOME DISCHARGES AND TRANSFERS

Nursing home residents have many rights under federal and state laws. Some of these laws protect them from being transferred or discharged against their will.

The resident or his family has a right to appeal the decision of the facility to discharge or transfer him. A successful appeal will allow him to stay in the facility.

It is easy to ask for an appeal hearing. The hearing is informal. There is no cost for appeal hearings and you do not go to court.

Residents age 60 or over may be able to get free help from **The Elder Law Clinic**, a project of Wake Forest University School of Law. The phone number is **(336) 758-5061**.

## HOW MUCH NOTICE IS A RESIDENT ENTITLED TO BEFORE A DISCHARGE?

The resident is entitled to thirty days advance notice of the facility's plan to discharge or transfer him. There are exceptions, such as if he has been in the facility for less than thirty days, or if the reason for discharge is more urgent. In those cases, notice should be given to him as soon as possible. **You may appeal a proposed discharge even if the facility plans to discharge the patient with less than 30 days notice.**

## WHAT MUST A DISCHARGE NOTICE SAY?

The notice must include, among other things:

- the **reason** for the proposed transfer/discharge;
- the **location** to which the resident is to be transferred;
- the effective date of the proposed discharge or transfer;
- a statement of the resident's **right to appeal** to a Hearing Officer;
- the name, address and phone number of the local ombudsman: (336) 904-0300 and the State Long-Term Care Ombudsman: (919) 855-3400;
- a statement that the resident has a **right to review his records** at least five days before the hearing; and
- a statement that the **appeal is free** of charge.

Finally, a **Request for Hearing form** must accompany the Notice of Transfer/Discharge.

## HOW CAN YOU APPEAL?

The appeal must be made in writing within eleven days from the date of the Notice of Discharge or Transfer. It is a simple form to fill out. The address to send it to is on the Notice. The resident or her representative must sign the Request for Hearing. Hearings are held by telephone or in person, in Raleigh.

No lawyer is required, though it may be helpful to have one. Some residents may be able to get free legal help from The Elder Law Clinic. The phone number is (336) 758-5061. Also, a local Legal Services program might be able to help.

In most cases, the hearing will take place before the date of the proposed discharge or transfer. The resident does not have to attend the hearing, but may if she wants to.

## WHAT HAPPENS AT A HEARING?

The nursing facility must prove that the resident is being discharged or transferred for one of the legally-permitted reasons. These reasons are listed elsewhere in this pamphlet. The resident or his representative has the right to:

- present any witnesses and documents in his own behalf;
- question any witnesses that the facility presents;
- make a statement summarizing the resident's point of view; and
- point out facts in the medical record that contradict the nursing home's position.

The resident, for example, might get a physician or social worker who is not connected with the nursing home to testify in support of the resident. The physician or nurse could give a "second opinion," challenging what the nursing home says.

The nursing home must prove that it tried every feasible alternative, before the discharge will be upheld by the hearing officer. For example, if the resident is being discharged for being abusive, did the facility creatively try to figure out and deal with the causes of this behavior, before acting to discharge the resident?

**REMEMBER:** A discharge or transfer for behavior problems is allowable only if the problem is severe, and is consistently documented in the resident's medical chart. The medical chart must also document methods tried by the home to manage the behavior.

## WHEN IS A DISCHARGE/TRANSFER ALLOWED?

The facility may only discharge or transfer the resident if:

- it is **necessary for his welfare and if his needs cannot be met in the facility**, OR
- his health has improved so that he no longer needs nursing services, OR
- the **safety of individuals in the facility is endangered**, OR
- the **health of individuals in the facility would otherwise be endangered**, OR
- the facility **ceases to operate**, OR
- he has **failed, after reasonable notice, to pay** for (or to have paid under Medicaid or Medicare) a stay at the facility, or for an allowable charge.

**You should consider appealing even though the Notice of Discharge/ Transfer has one of the "legal reasons" given as the basis for discharge. Asking for an appeal hearing gives you the opportunity to negotiate and, perhaps, agree with the home on a solution to the problem.**

A common situation is where a home says the resident's "care needs" have changed. Most facilities have the flexibility to adjust to these changes. The home **must have evidence** that the resident's care needs are greater **and documentation** that proper care cannot be provided where the resident currently lives.

**You can challenge the nursing home's assessment of what the resident's care needs are, and whether it can meet his needs.**

## RIGHT TO RETURN AFTER HOSPITAL STAY

People who are discharged to the hospital get the first bed available when they are ready to return to the nursing home.

Sometimes a person is sent to the hospital from the nursing home. After the hospitalization, he has a legal right to get back into the same home. (He must be eligible for Medicaid, not necessarily receiving it.) It does not matter what "level of care" is needed – inter-mediate or skilled - or what "level of care" beds are available.

The resident must be readmitted to the first available bed in a room shared with another resident of the same sex.

**IMPORTANT: Facilities may not transfer/discharge a resident when his private funds have been used up and when he has become eligible for Medicaid (unless the facility does not get Medicaid or Medicare). Sometimes the real reason for a discharge is to get rid of a resident who gets Medicaid, so the home can have higher paying, private-pay residents. THIS IS ILLEGAL!**

The laws described in this brochure apply only to Medicare/Medicaid certified facilities. If a facility may receive payment from either of those programs, the facility must use identical policies regarding transfer or discharge for all residents regardless of source of payment.

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