

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Fact Sheet:

Admission & Discharge Rights in NY State Nursing Homes

THE PROBLEM: We have learned that some nursing homes are telling people that their facility only provides short-term rehab services and does not provide long-term care. Some people who go into a facility for short-term care and wind up needing long-term care are even being told that they will need to go to another facility. The reason for this is that short-term rehab services tend to pay much more than long-term care services. However, since most nursing home care is paid for through public programs (Medicare and Medicaid), there are important standards to protect residents from unfair discharge or transfer.

THE FACTS:

- I. **There is no such thing as a short-term or rehab skilled nursing facility.** In order to be a licensed nursing home in New York State, a facility has to provide both short-term and long-term skilled nursing care. This means that a facility cannot discriminate against someone needing long-term care, whether it is someone who wishes to come in as a new resident or a short-term resident transitioning to long-term care.
- II. **Nursing homes are prohibited from discriminating based on source of payment.** According to the New York State Department of Health's public information on residents' rights (<https://www.health.ny.gov/facilities/nursing/rights/admission.htm>):
 - The nursing home **must** "obey all pertinent state and local laws that prohibit discrimination against individuals entitled to Medicaid benefits, and give explicit advice to you concerning your right to nondiscriminatory treatment in admissions (State regulations prohibit discrimination against individuals entitled to Medicaid benefits)"
 - The nursing home **cannot** "require a third-party guarantee of payment as a condition of admission, expedited admission or continued stay in the facility."
 - The nursing home **cannot** "require you to waive your rights to Medicare or Medicaid."
 - The nursing home **cannot** "require verbal or written assurance that you are not eligible for, or will not apply for, Medicare or Medicaid benefits."

Need Help?

- Contact your LTC Ombudsman at 855-582-6769 or www.ltcombudsman.ny.gov.
- File a complaint with the Department of Health at 888-201-456 or www.health.ny.gov.
- For more information on transfer, discharge and appeal rights: <http://ltcombudsman.org/issues/transfer-discharge#what> and <http://anyfc.org/resources.htm>.
- For more information on residents' rights: www.nursinghome411.org.

TRANSFER & DISCHARGE RIGHTS:

The following rights pertain to all licensed nursing homes under federal law. [Editor's note: The language in italics is taken from the federal regulations dated October 2017. Non-italicized language is paraphrased from the federal regulations. The regulations are available at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=371b56d5eda767bbbbc9625cce48c146&mc=true&n=pt42.5.483&r=PART&ty=HTML#se42.5.483_11.]

- I. **Right to Stay.** Residents must be allowed to remain in the facility, and not transferred or discharged unless:
 - a. *The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;*
 - b. *The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;*
 - c. *The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;*
 - d. *The health of individuals in the facility would otherwise be endangered;*
 - e. *The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay...*
 - f. *The facility ceases to operate.*
- II. **Right to Appeal.** A facility may not transfer or discharge a resident while an appeal is pending. [See <http://ltcombudsman.org/issues/transfer-discharge#what> for more information.]
- III. **Documentation Required.** *When the facility transfers or discharges a resident under any of the circumstances specified [in] this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.*
Documentation in the resident's medical record must include:
 - a. *The basis for the transfer...*
 - b. *When a resident is being transferred because the facility says it cannot meet the needs of a resident, **the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).***
[Emphases added.]
- IV. **Notice Before Transfer.** Before a facility transfers a resident, it must provide:
 - a. Written notice to the resident and his/her representative in language and manner that they can understand;
 - b. Notice must be given at least 30 days in advance. (With very limited exceptions, such as when a resident cannot be cared for safely or is a danger to others, in which case "notice shall be given as soon as practicable before transfer or discharge" and the facility must document the danger that failure to transfer/discharge would impose.)
 - c. *The facility must send a copy of the notice to... the State Long-Term Care Ombudsman.*