

IMPORTANT CONTACTS



If you have any questions regarding a resident in a nursing home, you should contact the **Office of the Long-Term Care Ombudsman** at 1-800-442-5640 or (603) 271-4375 or by email at LTCOP@dhhs.state.nh.us.



If the resident is 60 or over and you have legal questions you may contact the **New Hampshire Legal Assistance Senior Law Project** at 1-888-353-9944 or by email at seniors@nhla.org.

**LEGAL ADVICE &
REFERRAL CENTER**

If the resident is under age 60 you may contact **the Legal Advice & Referral Center** by calling 1-800-639-5290 or by completing an online application at www.nhlegalaid.org.



You may contact the **Disabilities Rights Center** if the resident is disabled or mentally ill at (603) 228-0432 or 1-800-834-1721.

NEW HAMPSHIRE TRANSFER/DISCHARGE LAW

GUIDE TO YOUR RIGHTS WHEN YOU ARE FACING
A TRANSFER OR DISCHARGE FROM A CERTIFIED
NURSING FACILITY



1-888-353-9944
TTY 7-1-1 or 1-800-735-2964

www.nhla.org



New Hampshire Office of the
Long-Term Care Ombudsman

1-800-442-5640

RESIDENTS' RIGHTS

Nursing home residents in New Hampshire have rights that are guaranteed by the Federal Nursing Home Reform Law and by State law. Your rights as a resident are the same whether you are paying privately or if another program, such as Medicaid, is paying for your care.

When a resident is first admitted into a nursing home, the nursing home must tell the resident about his or her rights. This information must be given both orally and in writing and must be provided in a language that the resident understands.

Residents have specific rights that protect them from unnecessary transfers or discharges from the nursing facility where they reside. This booklet explains your right to remain in your nursing facility and your right to return to the nursing facility after temporary hospital treatment. This information applies to all nursing homes that accept Medicare and Medicaid. There are different protections for assisted living, residential care facilities, and nursing homes that only take patients who privately pay.

You can call the numbers on the cover of this pamphlet for more information about your rights.

REQUESTING A HEARING

A resident has the right to request a hearing within 30 days of receiving the transfer/discharge notice. In most instances, if the resident requests the hearing within 20 days of receiving the notice, *the resident is allowed to stay in the nursing home until there is a hearing decision*. The hearing is conducted at the nursing home.

If a resident has received less than 30 days notice, he or she may request an expedited hearing within 10 calendar days of receiving the transfer/discharge notice. Expedited hearings are most often requested when the resident is at a hospital ready to return to the nursing home but the nursing home refuses readmission. In these cases, a hearing must be held at the hospital within 5 working days of the request.

A hearing can be requested by either the resident or his or her representative by writing to:

Administrative Appeals Unit
NH Department of Health and Human Services
105 Pleasant Street
Concord, NH 03301

At the hearing, the nursing facility must provide clear and convincing evidence that the transfer is necessary and that it has followed all the laws regarding transfers and discharges included in this pamphlet.

DISCHARGE PLANNING

A nursing facility must complete a discharge plan *before* initiating a resident transfer or discharge. The discharge plan must meet the resident's individual needs and ensure the resident's safety.

The plan must include the reasons for the transfer/discharge, as well as, all the efforts made by the facility to show that the transfer is necessary. The plan must show whether or not the resident is being transferred/discharged to a facility approved of by the resident and how his or her needs will be met in the new facility. The resident, as well as his or her family, if requested by the resident, must be consulted and the resident's doctor must approve the move as well.

The new location must be able to meet the resident's individual needs and provide a medically and socially appropriate setting. If the new location is a different nursing home, the new facility must have agreed to accept the resident and have an available bed.

LEAVING THE NURSING HOME

There are three types of situations in which a resident may leave a nursing facility:

- 1) Temporary absence
- 2) Transfer or
- 3) Discharge

A temporary absence from the nursing home occurs most often when a resident has to go to a hospital for treatment, which will require at least an overnight stay. The law provides a presumption, or legal assumption, that the resident will return to the nursing home after receiving medical care.

A transfer occurs when a resident moves from his or her current nursing home to another institutional setting, such as a move to a different nursing home that will assume responsibility for the resident's care.

A discharge occurs when a resident moves from a nursing home to a non-institutional setting, such as a move back to the resident's home or to the home of a family member.

TEMPORARY ABSENCE

When a resident leaves the nursing home for medical treatment the resident has the following rights:

- 1) **RIGHT TO A BED-HOLD** - The facility **MUST** hold that resident's bed for up to 10 days if payment or offer of payment has been made. If a resident is on Medicaid payment is at the Medicaid rate not at the private pay rate.
- 2) **RIGHT TO READMISSION** - If the resident is absent for more than 10 days or cannot pay for the bed hold, he or she still has the right to return to the next available bed at the nursing home.
- 3) **RIGHT TO WRITTEN NOTICE** - At the time a resident leaves the nursing home to go to the hospital, he or she must receive a written notice about these rights along with information on how to appeal a nursing facility's decision not to readmit.

If the nursing facility refuses to readmit a resident the temporary absence automatically becomes a transfer and the following transfer/discharge laws apply.



Therefore, in all transfers and discharges the resident must receive prior written notice. In most cases, the exceptions to the 30-day requirement listed on page 8 will not apply and the resident should receive 30-day notice. The 30-day notice must be given verbally and in writing. The notice must also be provided to the resident's legal representative or family if requested by the resident.

The law requires that the notice state: the specific reasons for the transfer, the new location and the date of the proposed transfer. The notice must also explain how the resident can appeal the proposed transfer/discharge by requesting a hearing.

Nursing home staff are required to meet with the resident, provide records, and offer to help the resident submit an appeal or to contact family members or friends that can help.

If you receive a written notice or are told you need to leave a nursing facility call the Office of the Long Term Care Ombudsman at 1-800-442-5640.

RIGHT TO WRITTEN NOTICE

Before any resident can be transferred or discharged, he or she **MUST** receive at least 30-days written notice, except if one of the following reasons applies:

- 1) The resident's health improves so that he or she does not need to stay in the facility.
- 2) The resident has urgent medical needs, which require an immediate transfer or discharge.
- 3) The safety of the other residents is endangered.
- 4) The resident has been in the facility for less than 30 days.

If a facility initiates a transfer or discharged with less than 30-days notice, the nursing home is still required to provide **written notice** to the resident, the resident's legal representative and/or family member as soon as practicable **prior** to the transfer or discharge.

TRANSFER/DISCHARGE

A nursing home can only transfer or discharge a resident for certain limited reasons. The facility must prove that one of the following situations exists:

- 1) The resident's health has improved so that the resident no longer needs the services provided by the facility as determined and documented by resident's personal physician.
- 2) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as determined and documented by resident's personal physician.
- 3) The safety, health, or both of the other residents in the facility is endangered. A physician must document this information in the resident's file.
- 4) The resident has failed to pay, or to have Medicare or Medicaid pay, for his or her stay at the facility. The facility must document its reasonable efforts to resolve payment problems in the resident's record. (In addition, a facility may not transfer or discharge a resident for nonpayment if Medicaid or Medicare eligibility is pending.)
- 5) The facility ceases to operate.



The nursing home must try all reasonable alternatives before considering a resident transfer or discharge. These alternatives might include investigating the cause of the resident's problem and then modifying the resident's care plan. Very often thoughtful

care planning eliminates the need for a resident transfer or discharge. Nursing facilities are required to provide a wide range of services to residents so it is rare that a facility cannot meet a resident's needs and keep all residents safe.

QUESTIONS TO ASK

If you receive a transfer/discharge notice from your nursing home, you should ask the following questions:

- What alternatives to the transfer or discharge have been tried?
- Does the facility serve other residents with the same or similar problems?
- What services will a different nursing home provide and why can't these services be provided in the current facility?
- If the reason for a proposed transfer is a safety concern related to behavior, what behavioral or environmental modifications have been tried?
- Has the facility exhausted all reasonable alternatives?
- How will the medical, social, and rehabilitative needs of the resident be met in the new facility?
- How will the new services differ from what the current facility is providing?