

STATE WIDE

New York StateWide Senior Action Council, Inc.

VIRTUAL RESIDENT/FAMILY ACTION COUNCIL
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ADMISSION, TRANSFER AND DISCHARGE

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ADMISSION RIGHTS AND RULES

ADMISSION: MATERIAL YOU SHOULD RECEIVE OR HAVE RECEIVED (415.3 and 415.26)



- ▶ **The facility's policies and procedures upon request;**
 - **For example: personnel policies**



- ▶ **Information on your right to live in the most integrated and least restrictive setting;**
 - **Home and community-based services and community transition programs;**

ADMISSION: MATERIAL YOU SHOULD RECEIVE OR HAVE RECEIVED (415.3 and 415.26)



➤ **Rates and Services;**

➤ **Facility Complaint System;**

ADMISSION: MATERIAL YOU SHOULD RECEIVE OR HAVE RECEIVED (415.3 and 415.26)



- **Need for all practitioners to be affiliated with the facility and that your personal doctor or dentist may apply;**

- **You may seek a second opinion and may call a specialist selected by you for medical consultation (the facility is not required to pay);**

ADMISSION: MATERIAL YOU SHOULD RECEIVE



- ▶ **Refund policy if you leave;**

- ▶ **Bed hold policy if you go to the hospital or go out for therapeutic leave;**

ADMISSION: MATERIAL YOU SHOULD RECEIVE OR HAVE RECEIVED (415.3 and 415.26)



- ▶ **Your assessment, where you fall in the case mix system;**
- ▶ **Explanation of the case mix system if you request it;**

ADMISSION: MATERIAL YOU SHOULD RECEIVE OR HAVE RECEIVED (415.3 and 415.26)



- ▶ **The resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility both orally and in writing in a method of communication that the individuals understand;**

THINGS YOU NEED TO KNOW BEFORE SIGNING AN AGREEMENT CONTRACT



- **As a family member you cannot be asked to be financially responsible unless you are a power of attorney and are using the resident's funds.**
- **You cannot be asked to donate to the home as a prerequisite for admission.**

PRE-DISPUTE ARBITRATION AGREEMENTS

- Arbitration is a process in of one or more arbitrators who decide the outcome instead of a jury made up of members of the community. “Pre-dispute” arbitration means that the consumer must agree to arbitration before any dispute arises.
- Once signed, these agreements bar consumers from seeking legal action in court should they suffer harm or injury.



➤ If you sign an arbitration agreement and are later hurt because the facility was negligent or even if you were intentionally injured by a staff member or fellow resident, you will **NOT** be able to hold the nursing home accountable in court.

➤ [arbitration-fact-sheet-2020.pdf](#)
(theconsumervoice.org)



**IF YOU DECIDED
TO SIGN OR HAVE
SIGNED:
REQUIREMENTS
OF PRE-DISPUTE
ARBITRATION
AGREEMENTS:
MUST BE
TRANSPARENT**

The agreement must be explained in a form and manner that you understand, including in a language that you understand; and require that you acknowledge that you understand the agreement.

The agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials,

If you signed an arbitration agreement, you must be allowed to rescind (undo) the agreement within 30 days.

EXPERIENCES OF ADMISSION TO A NURSING HOME

**ACTIONS YOU CAN TAKE IF YOU, AS A
FAMILY MEMBER, ARE ASKED TO BE
FINANCIALLY RESPONSIBLE AND YOU ARE
NOT A POWER OF ATTORNEY**

WHAT CAN YOU DO IF THE AGREEMENT ASKS YOU, AS A FAMILY MEMBER, TO BE FINANCIALLY RESPONSIBLE?

- If you do not have legal access to a resident's income or resources available to pay for facility care, you cannot be made financially responsible.
- If you find any line in the admission contract that indicates you, as a family member, agree to be financially responsible:



CROSS IT OUT PUT YOUR INITIALS AND THE DATE

**ACTIONS YOU CAN TAKE IF YOU ARE ASKED
TO SIGN A PRE-DISPUTE ARBITRATION
AGREEMENT AND YOU DO NOT WANT TO**

WHAT TO DO IF YOU ARE ASKED TO SIGN A PRE-DISPUTE ARBITRATION AGREEMENT AND YOU DO NOT WANT TO SIGN?

You have the right to refuse to sign. You cannot be denied admission or discharged for not signing.



Above all, don't feel pressured to sign! You can always decide to seek arbitration later, after a dispute has occurred, if you decide it is in your best interests

**CROSS IT OUT
PUT YOUR INITIALS AND THE DATE NEXT TO IT.**

**NURSING HOMES
SHOULD BE
ACCOUNTABLE
FOR INVOLUNTARY
EVICTIONS**



TRANSFER AND DISCHARGE

415.3



THREATENED WITH TRANSFER AND DISCHARGE

“You may be happier in another facility, we’ll start looking for another nursing home for you,”

“Maybe our facility can’t seem to meet your mother’s needs and we need to find a facility that can.”

“You have to move out in three days.”

TRANSFER AND DISCHARGE RIGHTS: THERE ARE ONLY 6 REASONS YOU CAN BE DISCHARGED

1. The facility cannot meet your needs;
2. You no longer need nursing facility services;
3. Your presence endangers the safety of others in the facility;
4. Your presence endangers the health of others in the facility;
5. You (the resident) have failed to pay; or
6. The facility is closing.



IF YOUR HOME BELIEVES IT HAS GROUNDS FOR DISCHARGE

- It must give a written notice to the resident and resident's representative 30 days before transfer or discharge, except in cases where the resident is at risk of harming themselves or others, when the resident could be discharged earlier.



- In a language that the resident and representative understand.

THE NOTICE MUST INCLUDE:

- ✓ the alleged reason for the discharge,
- ✓ the planned discharge date,
- ✓ the location to which the resident will be transferred,
- ✓ an explanation of the resident's appeal rights,

THE NOTICE MUST INCLUDE:

- ✓ contact information for the State long-term care ombudsman program,
- ✓ a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman,

THE NOTICE MUST INCLUDE:

- ✓ an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision *if* the request for an appeal is made **within 15 days** of the date the resident received the notice of transfer/discharge*; and
- ✓ if applicable, the agencies responsible for advocacy on behalf of persons with mental illness and developmental disabilities.

*Federal regs say anytime before the discharge.

IF YOUR HOME BELIEVES IT HAS GROUNDS FOR DISCHARGE

- The law requires the nursing home to problem-solve the reason for discharge and make attempts to address the issue(s).
- A doctor must document the reason for discharge in your medical record.
- Residents can be transferred to another appropriate facility only after consultation, as appropriate, with the resident, his or her physician, and designated representative except in an emergency situation, in which case the operator shall notify the physician and designated representative immediately and record the reason for the transfer.

EXPERIENCES RELATED TO DISCHARGE OR TRANSFER

**ACTIONS YOU CAN TAKE IF THREATENED
WITH DISCHARGE AND YOU DO NOT WANT
TO MOVE**

ACTIONS YOU CAN TAKE IF THREATENED WITH DISCHARGE AND YOU DO NOT WANT TO MOVE

- Do not leave.
- Appeal within 15 days of the written discharge notice.**
- If you did not receive a discharge notice, call the Department of Health and ask to make an appeal.

**Federal regulations permit you to appeal any time before a discharge.

RESPONSES TO FACILITY REASONS FOR DISCHARGE

1. YOU ARE TOLD YOU HAVE TO LEAVE BECAUSE THE FACILITY *HAS RECEIVED NO PAYMENT*

- If you have submitted paperwork for third party payment and payment status is pending, such as applying for Medicaid, the facility **cannot discharge you for failure to pay.**
- “A transfer or discharge for failure to pay shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or **funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.**”

**2. YOU ARE
TOLD THE
TRANSFER OR
DISCHARGE IS
NECESSARY FOR
YOUR WELFARE:
*YOUR NEEDS
CANNOT BE MET***

“In the absence of atypical changes in residents’ conditions, it should be rare that facilities who properly assess their capacity and capability of caring for a resident then discharge that resident based on the inability to meet their needs.”**

➤ This is a legal reason only if your needs cannot be met in any nursing home

- ✓ Don’t move
- ✓ Request a hearing
- ✓ Ask to see your care plan

** (NYSDOH DAL-NH 19-07: 19-07_notice_of_transfer.pdf (ny.gov)).

Except for specialized needs such as acute psychiatric, bariatric, or ventilator care, nursing homes are certified to provide similar types of care and services.

**YOU ARE TOLD
THE TRANSFER
OR DISCHARGE
IS NECESSARY
FOR YOUR
WELFARE: *YOUR
NEEDS CANNOT
BE MET***

➤ Remember: The facility must document the following in your record:

- ✓ The specific need(s) that allegedly cannot be met.
- ✓ What the facility has done to try to meet those needs.
- ✓ The specific services that available in the “new” facility that will supposedly meet your needs.

**DID THE FACILITY DO THIS? TAKE A LOOK AT
THE CARE PLAN**

**YOU ARE TOLD
THE TRANSFER
OR DISCHARGE
IS NECESSARY
FOR YOUR
WELFARE: *YOUR
NEEDS CANNOT
BE MET***

TAKE A LOOK AT THE CARE PLAN

- Does the care plan indicate what needs cannot be met?
- Does the care plan indicate an attempt to deal with the issues?
- Does the care plan indicate alternative ways of dealing with the issues?
- Has your doctor or the facility's doctor signed?
- Does the care plan indicate that the how the new facility will meet your needs?

**3. YOU ARE TOLD
YOU ARE BEING
DISCHARGED
BECAUSE *THE
SAFETY OR HEALTH
OF INDIVIDUALS
IN THE FACILITY
WOULD BE
ENDANGERED.***

- ✓ Does the care plan indicate that you are a threat to the safety or health of others and why?
- ✓ Has your doctor or the facility's doctor signed?
- ✓ Does the care plan indicate an attempts to deal with the issues?
- ✓ Does the care plan indicate alternative ways of dealing with the issues?

**4. YOU MUST
MOVE OUT
BECAUSE YOU
ARE TOO
DISRUPTIVE**

- Disruptive behavior is not equivalent to endangering the health or safety. May be a symptom of a condition.

**5. YOU MUST
MOVE OUT
BECAUSE YOU
ARE NOT
COMPLIANT**

- This is not a reason for discharge. The resident can refuse treatment. The Facility must make reasonable accommodations to address resident's preferences.

**6. YOU MUST
MOVE OUT
BECAUSE YOU
*ARE TOO
EXPENSIVE TO
CARE FOR***

- Facility is required to provide care to reach highest practicable level of well-being.
- Discrimination on basis of payment source (Medicaid) is prohibited

**7. YOU MUST
MOVE OUT
BECAUSE
YOUR
MEDICARE
COVERAGE
HAS ENDED**

- You can stay on Medicaid or pay privately

**8. YOU MUST
MOVE OUT
BECAUSE YOU
ARE TOO
DIFFICULT**

- **Being difficult is not one of the 6 reasons permitted for discharge.**
- **Nursing homes are paid to care for people with many different physical and cognitive symptoms.**

**9. YOU MUST
MOVE OUT
BECAUSE YOU
COMPLAIN
TOO MUCH**

- You can complain without retaliation

APPEALING THE DISCHARGE OR TRANSFER

You have the right to:

- File an appeal to the New York State Department of Health within 60 days (The facility must help you if you need help.)
- **MAKE THAT APPEAL WITHIN 15 DAYS OF THE DATE THAT YOU RECEIVE THE NOTICE OF TRANSFER/DISCHARGE AND YOU HAVE THE RIGHT TO REMAIN IN THE FACILITY (EXCEPT IN CASES OF IMMEDIATE DANGER) PENDING THE APPEAL DECISION**
- **Federal Rules: MAKE THE APPEAL ANYTIME BEFORE THE DISCHARGE AND YOU HAVE THE RIGHT TO REMAIN**

APPEALING THE DISCHARGE OR TRANSFER

You have the right to:

- A post-transfer hearing within 30 days of transfer if you did not request a hearing prior to transfer;
 - ✓ if you win the appeal you will can return to the first available bed in the facility; and
- In cases of residents discharged/transferred due to imminent danger, the resident may return to the first semi-private available bed if he or she prevails at the hearing on appeal.

HOW TO APPEAL NURSING HOME DISCHARGE

- Call New York State Department of Health (NYS DOH) and state you are appealing the discharge.
 - (Be specific it is the same # as the complaint hotline!) **1-888-201-4563**
 - You can also fax or write to the Department of Health to request the appeal:
 - Fax: 518-408-1157 Address:
Department of Health Centralized
Complaint Intake Program 875 Central
Avenue Albany, NY 12206

APPEALING NURSING HOME DISCHARGE

- NYS DOH will request a copy of the notice from the facility to review it for validity 'on its face'.
- If notice is invalid, facility will be informed it cannot discharge resident
- NYS DOH Bureau of Adjudication Sets the date/time/place of the hearing before an Administrative Law Judge (ALJ)
- Hearing will typically be where the resident is located.

WHAT HAPPENS WHEN YOU AGREE WITH THE DISCHARGE?

- The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative makes that decision.
- The facility must permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

RETURNING

- You have the right to return to the facility following hospitalization or therapeutic leave, including the right to return to your bed or the first available bed.
- Sending you to the hospital does not relieve the facility of the responsibility of following the discharge requirements if the facility refuses to take you back.
- If the facility says that you cannot return, it must issue a discharge letter that gives all the notice requirements and you can appeal.

**MEDICAID
BED HOLD
POLICY: FOR
RESIDENT IN
FACILITY
FOR 30 DAYS
OR MORE**

- **You may leave the nursing home for up to 10 days a year for “therapeutic leave.**
- **The facility must reserve the same bed and room occupied before the leave of absence in this situation.**

**MEDICAID
BED HOLD
POLICY: FOR
RESIDENT IN
FACILITY
FOR 30 DAYS
OR MORE**

- If your hospitalization or therapeutic leave exceeds the bed hold period you will be readmitted to the facility immediately upon the first availability of a bed in a semi-private room.

RESOURCES

Call **StateWide's Patient Rights Helpline:**



800-333-4374

Mobilization for Justice - (855) 444-6477
They will help with appeals for NYC only

RESOURCES

- [Transfer and Discharge - Your Rights as a Nursing Home Resident in New York State and Nursing Home Responsibilities \(ny.gov\)](#)
- [nursing-home-discharges-final - 8 2018.pdf \(theconsumervoice.org\)](#)

RESOURCES

- Involuntary transfer and discharge brochure1.pdf NEW 2018.pdf
(ltcombudsman.org)
- Consumer Voice conference 2015, Eric Carlson
Microsoft PowerPoint - AoA webinar.pptx
(nclc.org) and 25 Common Nursing Home
Problems and How to Resolve Them.
(justiceinaging.org)

RESOURCES

- PowerPoint Presentation (nursinghome411.org) From Center for Elder Law and Justice
- How-to-Appeal-a-Nursing-Home-Notice-of-Discharge-April-2019.pdf (mobilizationforjustice.org)
- arbitration-fact-sheet-2020.pdf (theconsumervoice.org)