

## Transfers and Discharges from Nursing Homes Protections Against Arbitrary Actions

An attempt to transfer or discharge a resident from a nursing home against his or her wishes can be upsetting and frightening for residents and family. Fortunately, there are federal and state laws that protect a resident. A "transfer" usually involves moving from one nursing home to another or into a hospital because a nursing home says it cannot properly care for a resident. A "discharge" usually means a move from the nursing home to a new place because the facility says the resident didn't pay the bill, the resident is difficult to care for or creates risks for other residents or the staff. A resident cannot be transferred or discharged against the resident's wishes unless:

1. The resident's welfare and needs cannot be met in the facility. This could happen, for example, when the resident's condition has worsened and he or she needs to go to a hospital;
2. The resident's health improves enough so he or she no longer needs nursing home care. If the resident is private pay, he or she could probably stay at the facility as long as he or she continues to pay for care. If Medicaid pays for the care, the state will send a notice saying payment will stop because the resident no longer needs nursing home care. The resident has the right to appeal this decision. The resident can get a hearing with the Department of Human Services as part of that appeal;
3. The resident endangers the safety of others in the facility. This could be the case if a resident hurts or threatens someone. The facility must try to deal with the resident's behavior before it can try to discharge;
4. The resident endangers the health of others in the facility. The nursing home would need to show that the resident's health puts other residents in danger and that only a transfer would prevent this danger;
5. The resident doesn't pay the nursing home bill. The resident has until the date of transfer to pay in full and stay in the facility. Note that a nursing home can't discharge someone just for going on Medicaid; or
6. The nursing home stops operating. This happens when the nursing home goes out of business or is closed by the state for rules violations.

Even if a nursing home thinks it meets one or more of the above grounds for discharge or transfer, it must follow a number of other rules before it can actually transfer or discharge a resident. Those rules include:

1. Advance Notice. Except in an emergency, the nursing home must give thirty (30) days advance notice to the resident, the resident's responsible party and the Department of Inspections and Appeals. The notice must also go to the resident's doctor and the Iowa Long Term Care Ombudsman's office. The notice must state:
  - i. the date and specific reason for the transfer,
  - ii. the location of the transfer,
  - iii. the right to appeal,
  - iv. how to appeal, and
  - v. the telephone number of the Iowa Long Term Care Ombudsman.

If the facility believes there is an emergency, it must give notice as early as practicable but at least 48 hours before the transfer.

2. The Appeal Process. As part of the appeal process, the resident has seven (7) days to ask for a hearing. If the resident is not competent, his or her guardian, responsible party or other interested family member may file the appeal. An administrative law judge hears the case. An appeal hearing must be held within fourteen (14) days. The resident can be represented by a lawyer. The resident may call witnesses and introduce evidence. Hearings are held at the nursing home. The nursing home has to prove it has good reason for the transfer. The losing party at the hearing can appeal to the Director of Inspections and Appeals within ten (10)

days of the decision. (The resident cannot be transferred before the final decision by the Director of Inspections and

Appeals.) After that, either party can ask the Iowa District Court to review the decision.

3. Counseling. The facility must counsel the resident about the transfer before it takes place. The new facility must also provide counseling when the new resident arrives.

4. Transfer or Discharge Plan. As part of the discharge process, the facility must develop a plan to provide for the safe and orderly transfer or discharge of the resident. This means that the nursing home must ensure that the resident will be transferred or discharged to a place where the resident's needs will be met. This includes ensuring the new place can provide the proper level of care, meet specific healthcare needs and provide a safe environment. A nursing home cannot just discharge a resident to his or her home or family's home if the resident clearly needs more care than he or she can get there.

A resident who gets an involuntary transfer or discharge notice should contact the Iowa Long Term Care Ombudsman's office at 1-800-532-3213.

The resident or his or her family may also want to contact a private attorney with expertise in this area or the Legal Hotline for Older Iowans at 1-800-992-8161.

If the nursing home is trying to discharge a resident for non-payment and someone else is in charge of his or her finances but is not doing their job, the resident or his family should contact the Nursing Home and Home Health Agency Complaint Hotline at 1-877-686-0027 or the Department of Human Services at 1-800-362-2178 to make a report of financial exploitation.

This information is from the Legal Hotline for Older Iowans 1-800-992-8161. The Hotline is a project of Iowa Legal Aid that is partially funded by the U.S. Administration on Aging. The Hotline is a free, confidential service for all Iowans 60 or older with questions on non-criminal legal matters.