

Fact Sheet: **Involuntary Discharge from a Nursing Home**

What is an involuntary discharge?

An involuntary discharge occurs when a resident is required to leave the nursing home and is not allowed to return. This can occur when the nursing home issues a written notice or when staff pressure the resident to leave.

When can a nursing home discharge a resident involuntarily?

State and federal law protect residents from involuntary discharges except in limited circumstances. A nursing home may discharge a resident only for the following reasons:

- The resident's needs cannot be met in the nursing home.
- The resident no longer needs nursing home care.
- The safety or health of individuals in the nursing home is endangered.
- The resident has failed after reasonable notice to pay nursing home charges or have these charges paid by Medicare, Medicaid, or other insurance. Resident cannot be discharged if a Medicaid application is pending, Medicaid eligibility is being appealed, or a request for other insurance coverage of the nursing home stay is pending.
- The nursing home closes.

The law **does not** permit a nursing home to involuntarily discharge a resident because -

- The nursing home thinks the resident or family is difficult or unpleasant.
- The resident or family complains about the nursing home.
- The resident needs a high level of care, supervision, or assistance.
- The resident's payment source changes from private pay or Medicare to Medicaid as long as a Medicaid certified bed is available in the nursing home.

In many nursing homes, all beds are certified for Medicaid. If a nursing home claims it does not have a Medicaid bed available, check with the ombudsman.

How can the Ombudsman help the resident?

The local ombudsman should receive notice of the involuntary discharge. If the resident or resident's representative wants help with the discharge, the ombudsman can offer additional information, attempt to mediate the issues leading to the involuntary discharge, explain the appeals process, and/or try to get free legal help for the resident.

Residents or their families or representatives should contact the Ombudsman or legal help as soon as possible. This assistance can be invaluable in fighting an involuntary discharge.

What rights do residents have when a facility attempts to involuntarily discharge them?

Written Notice

The nursing home must provide the resident written notice in a language the resident or the resident's representative can understand. The notice must also be provided to an immediate family member or a legal representative.

Facilities must use the State form that includes the reason for the discharge, the date of the proposed discharge, and the location to which the person will be discharged. The notice must also include a hearing request form and a postage-paid, pre-addressed envelope to the Michigan Administrative Hearing System.

Written notice must be given at least 30 days before the proposed discharge in most cases. In the limited circumstances described below, written notice may be given less than 30 days prior to the discharge:

- The discharge is based on an allegation that the resident is a danger to the health or safety of others. This is **only** legitimate if the resident presents an immediate, substantial danger to others. Moreover, the nursing home should have documented the danger and attempts to address the issues that gave rise to the dangerous situation.
- The resident's health has improved sufficiently to allow a more immediate discharge.

The nursing home must submit a copy of the involuntary discharge notice to the Ombudsman program.

File an Appeal

A resident has the right to appeal the discharge by requesting a hearing. Request for hearing using the form provided or any written community must be sent within 10 days after receipt of the written notice to:

Michigan Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems
Request for Hearing – Involuntary Transfer/Discharge
P.O. Box 30664, Lansing MI 48909

Fax: (517) 241-2635

Email: Bchs-help@michigan.gov (Subject Line: LTC Request for Hearing)

The resident can stay in the nursing home (and Medicaid will continue to pay if that is the resident's source of payment) while the appeal is pending. Hearings are conducted by an Administrative Law Judge at the facility or by telephone. The burden of proving the discharge is permissible rests on the nursing home. Residents or their representatives can present information and witnesses and can cross-examine the nursing home's witnesses to demonstrate that the discharge is inappropriate or that the nursing home failed to fulfill its legal responsibilities.

If the resident loses the hearing, he or she must leave the facility on the 34th day following receipt of the written notice or the 10th day following receipt of the Administrative Law Judge's decision, whichever is later, as long as there is an acceptable discharge plan approved by the State.

Preparation for discharge

It is the nursing home's legal responsibility to find an appropriate location to which to discharge the resident and to provide sufficient orientation and preparation to minimize harm from the move. Nursing homes cannot put the burden of finding an alternate placement on the resident or family member and may not require the family member to take the resident home if the family member does not wish to do so or is not able to do so. Among the tasks the nursing home is required to do are-

- Discuss the discharge with the resident, the resident's next of kin or guardian or the person or agency responsible for the resident's placement or care in the nursing home
- Summarize the discussion and who was present in the resident's clinical record
- Provide counseling before and after the discharge to minimize emotional trauma

- If at all possible, arrange for the resident to visit the place to which he or she will be discharged
- Under Michigan Law, nursing homes should also consider the recommendation of the attending physician, make the optimum placement to minimize the possibility of subsequent transfers, involve the resident and his or her family and/or legal guardian in the process of choosing a new home, and ensure a family member or other appropriate person is available to accompany the resident when he or she moves (unless the resident declines to be accompanied)

Approval by the State

Before a resident can be discharged, the nursing home must submit documentation and the discharge plan to the State, and the discharge plan must be approved by the State.

Rehearing and/or Court Suit

If the discharge is upheld by the Administrative Law Judge, the resident has a right to request a rehearing or bring suit in Circuit Court in the county where the nursing home is located.

Michigan Long Term Care Ombudsman Program

Free and Confidential Help

1-866-485-9393

Email: MTLCOP@meji.org

Website: MLTCOP.org

**Michigan Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems**

517-241-2638