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## Nursing Home Resident Transfer and Discharge Rights

# New Hampshire Nursing Home Resident Transfer and Discharge Rights

Recently, I have seen several cases of involuntary discharge of nursing home residents (and residents of Assisted Living Facilities.) Nursing homes have some constraints in this area:

1. Statutory. RSA 151:26
2. Regulatory. § He-E 802.15. Transfer or Discharge of Residents
3. Contractual. The admission agreement and Marketing materials

The following will give you a brief overview of the constraints nursing homes have and the rights a resident has. This is an overview and not complete. If you have a family member who has been notified of an involuntary transfer- even within the same facility to another room- then you should immediately contact an experienced elder law attorney.

### **Statutory**

RSA 151.26 is the start of the regulatory process concerning involuntary discharges in New Hampshire. Under this statute, also known as the (Patient's Bill of Rights") a nursing home resident cannot be discharged against his/her will except for *"The patient shall be transferred or discharged after appropriate discharge planning only for medical reasons, for the patient's welfare or that of other patients, if the facility ceases to operate, or for nonpayment for the patient's stay, except as prohibited by Title XVIII or XIX of the Social Security Act. No patient shall be involuntarily discharged from a facility because the patient becomes eligible for medicaid as a source of payment."*

### **Regulatory**

As with most laws, the agency tasked with enforcing the law is required to further interpret that law by passing *regulations*; in this case, the Department of health and Human Services has enacted He-E 802.15-18. (Assisted living regulations are at He-P 805.15.) These regulations are too long to include here but the main points are:

1. There must be proper discharge planning. The plan must include what alternate measures short of discharge that the facility explored and whether or not the facility involved the Long term Care Ombudsman.
2. There must be a written 30 day notice with the right to appeal prominent in the notice unless the "urgent needs of the resident" so require and this is documented in the clinical record by the attending physician.
3. The resident's clinical record must support any claims that are based on the resident's health, safety or the health and safety of other residents. The documentation must be by the resident's personal physician or ARNP.

4. There must be documentation that a receiving facility is able to adequately care for the resident and has accepted the resident.

5. The Notice of Discharge or Transfer must include:

- a. the basis of the discharge or transfer
- b. the effective date
- c. where the resident is to be transferred.
- d. an explanation of the right to appeal
- e. for residents 60 or older, the name and address of legal services providers under Title VII
- f. other miscellaneous provisions

6. There are significant procedures for the appeal of a Notice of Discharge or Transfer in He-E 802.18 and in He-C 200. Some of the provisions are:

a. if the resident appeals the Notice within 20 days and unless the discharge/transfer is necessary for the health/safety of the resident or other residents, the transfer/discharge is suspended until the outcome of the appeal is determined. Such necessity must be documented in the clinical record by a physician.

b. The decision must be rendered within 15 working days.

c. The resident may appeal to Superior Court, Probate Court or the Department of Health and Human Services under He-C 200

d. the resident or representative has a right to the clinical record upon either an oral or written request and the record must be produced within 24 hours.

There are other miscellaneous requirements as well. If you are involved in an involuntary transfer or discharge of a loved one, contact an experienced elder law attorney.\

## **Contract Law**

Sometimes overlooked is the contract that binds the resident and the facility. The contract is not necessarily limited to the admission agreement that was signed. All of the marketing materials and even verbal assurances, if those can be proven, may very well constitute a contract and prevent an involuntary transfer/discharge.

## **Assisted Living versus Nursing Homes**

The rules for assisted living facilities are somewhat different. The statute is the same but the regulations are found at He-P 805.15. While an appeal may still be made to either Superior Court or Probate Court, there is no provision for appeal to the Department of Health and Human Services. Overall, the regulations are much less detailed but the first steps are a Notice and a discharge plan.

## **Transfers within the Facility**

Transfers from one room to another are transfers just the same. If the transfer is to/from a skilled unit, there are some specific requirements on top of those enumerated above.

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