

Involuntary Discharge From Nursing Home: CMS Rules To Be Followed Or Resident Can Be Ordered Re-Admitted.

Section 483.12

A seventy-two year old patient was admitted to a nursing home as a Medicaid patient and placed in the home's Alzheimer's unit.

Over the next several months it was noted in his chart he was becoming increasingly difficult to handle.

He had to be hospitalized for complaints of abdominal pain. While he was in the hospital the nursing home sent a document titled Advance Notice of Discharge informing the patient and his daughter, who was his legal representative, that he was being discharged on the grounds that, "... discharge is essential to safeguard you [the resident] or other residents from physical or emotional injury..." which "... is documented in your clinical record by a physician."

The daughter got a lawyer who filed papers with the Department of Health challenging the discharge notice and demanding a hearing.

While the resident was still in the hospital the Department of Health hearing officer ruled the discharge notice was legally defective. Thirty days notice is required unless there is emergency justification for discharge on short notice, which there was not, and the notice of discharge did not specify, as required, the location to which the resident was being discharged.

However, the hearing officer also ruled he had no legal authority to order the resident re-admitted to the nursing home, whether or not the nursing home had acted improperly in attempting to discharge him in the first place.

The District of Columbia Court of Appeal, however, ruled a hearing officer does have the legal authority, implicit in the Federal regulations for long-term care, to order a resident re-admitted when the hearing office has found an attempted involuntary discharge improper. **Paschall v. District of Columbia Dept. of Health**, ___ A. 2d ___, 2005 WL 775308 (D.C. App., April 7, 2005).

Transfers and discharges from long-term care facilities are governed by Title 42 Code of Federal Regulations, Section 483.12. See <http://www.nursinglaw.com/transfer.pdf>.

A resident or the resident's legal representative has the right to challenge a transfer or discharge. Every state is required to have a procedure for a hearing officer to consider and rule upon any such challenge.

In this case the nursing home was wrong to insist that the hearing officer lacked legal authority to order the resident re-admitted if the hearing officer found the timing of the notice of transfer or discharge or the grounds for the transfer or discharge were not legally sufficient.

It is not necessary for the resident or the resident's legal representative to follow a two-step process of going before a hearing officer and then going to court for a legal injunction to enforce the hearing officer's decision.

DISTRICT OF COLUMBIA
COURT OF APPEALS
April 7, 2005

Transfer and discharge requirements.

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(5) Timing of the notice.

(i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered ...

(B) The health of individuals in the facility would be endangered ...

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge ...

(D) An immediate transfer or discharge is required by the resident's urgent medical needs ... ; or

(E) A resident has not resided in the facility for 30 days.

(6) Contents of the notice. The written notice ... must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;