Involuntary Discharge from Nursing Homes

What law protects residents in nursing homes?
Nursing home residents are protected from involuntary transfer and discharge under the Nursing Home Reform Law of 1987. The Reform Law applies to every nursing home that is certified to accept payment from the Medicare and/or Medicaid programs, even if the resident involved is not utilizing Medicare or Medicaid payments. In some cases, a nursing home may also be liable to a resident under the Fair Housing Act.

What is an involuntary discharge?
A transfer/discharge is considered voluntary, or resident initiated, when the resident or representative has given written or verbal notice of their intent to leave the facility. A transfer/discharge is considered involuntary, or facility initiated, if it does not originate through the resident's verbal or written request, and/or is not in alignment with the resident's preferences and stated goals for care. An involuntary discharge is also called an eviction.

When can a facility involuntarily discharge a resident?
Under the Nursing Home Reform Law of 1987, nursing homes are prohibited from involuntarily transferring or discharging a resident unless they can establish that one of the following six reasons for transfer or discharge exists:

1. The resident needs a level of care that the nursing facility cannot provide. A cannot-meet-your-needs eviction only applies if the resident's needs cannot be met in a nursing home generally. A nursing home cannot use its own inadequate care to justify eviction. These sorts of claims should be measured by what a nursing home is required to do under the law, and not by the nursing home's potentially deficient care. For these types of evictions, federal regulations require that the resident's doctor:
   • Document the resident's unmet needs at the nursing home,
   • The nursing home's attempts to meet those needs, and
   • The ability of the proposed new facility to meet those needs.

2. The resident's health has improved to the point that he or she no longer needs nursing home care.

3. The resident's clinical or behavioral status or condition jeopardizes the safety of other residents. A nursing home cannot discharge a resident if the threat of safety to others can be eliminated or significantly reduced by granting the resident a reasonable accommodation.

4. The resident's presence in the nursing home jeopardizes the health of other residents. A nursing home resident, like any other person, has a constitutional and common-law right to refuse medical treatment. Thus, an eviction cannot be based solely on a resident refusing treatment, unless the refusal poses a risk to the resident's or other individual's health and/or safety.

5. The resident has failed, after reasonable and appropriate notice, to pay for care. A change in payment source
must not lead to eviction. If a resident’s Medicare coverage ends, they must be given a reasonable amount of
time to come up with another source of payment. Nursing homes also may not evict a resident for nonpayment
while the Medicaid program (or another third-party payor) is considering a claim for payment. Even if a resident
has been denied Medicaid coverage, if an appeal for coverage is filed, the resident cannot be forced to move
out of the nursing home during this time.

6. The facility ceases to operate.

What must a facility do when they are discharging you?

If a nursing home believes that it has grounds to involuntarily discharge a resident, it must give a written notice to
the resident and resident’s representative in a language that the resident and representative understand and record
the reason(s) for discharge in the resident's clinical record. In general, the notice must be provided at least 30 days
prior to the date of the proposed transfer or discharge and include all of the following information:

• The reason for the transfer or discharge
• The location the resident will be transferred or discharged to (the location must be specific, appropriate, available,
  and agreeable to taking the resident)
• The date of transfer or discharge
• Information about the resident’s right to appeal to the state concerning the transfer or discharge, with the name,
  address, and telephone number of the state and local long term care ombudsman programs.

When a resident is being transferred, the nursing home must also provide adequate preparation and orientation to
ensure a safe transfer and to minimize anxiety. If the transfer will be made to a non-nursing-home setting, the
nursing home must consider the availability of caregivers and other support persons. Even if an eviction is
otherwise legitimate, it should not be carried out if the resident would be put in an unsafe situation.

What is the appeals process?

If a resident is being involuntarily discharged for a reason that does not fall into one of the six categories listed
above, the resident should stay at the nursing facility and file an appeal as quickly as possible (and no later than
the proposed discharge date) with the state Medicaid agency:

Director’s Office/Administrative Hearings Division of Medicaid and Health Financing

PO Box 143105
Salt Lake City, UT 84114-3105
Email: administrativehearings@utah.gov
Fax: (801) 536-0143

The facility must assist the resident if the resident needs help in completing and submitting a request for an appeal.
A facility cannot carry out an involuntary transfer or discharge while an appeal is pending unless, by staying in the
facility through the appeal decision, the resident would endanger the health or safety of themself and others in the
facility. Appeals are governed by the same regulations that apply to Medicaid hearings. Hearings are generally held
at the nursing home by a state hearing officer and tend to be informal. Residents have a right to examine relevant
documents prior to the administrative hearing and to cross-examine adverse witnesses during the hearing.

**What happens if a resident is hospitalized?**

Some nursing homes participate in what is called “patient dumping”, which occurs when a nursing home resident is admitted to a hospital and, upon time for discharge, the nursing home claims his/her bed is no longer available. While some states require nursing homes to hold a resident's bed for a period of time upon hospitalization, this is not the case in Utah, and Utah nursing home facilities do not receive payment from Medicaid for any days for which a bed is held while a resident is temporarily hospitalized. If, after return from the hospital, the resident’s nursing home bill would be paid through Medicaid or Medicare, the resident has the right to return to the previous bed in the nursing home, if that bed is still available. Otherwise, the resident must be given the next available bed. A bed is only considered available if it is certified for the payment type (Medicaid or Medicare) that the resident will be using.

**The Fair Housing Act and Reasonable Accommodations**

While being old is not per se a disability, the likelihood of having a disability rises as people age. The Fair Housing Act prohibits housing providers, such as nursing homes, from discriminating against applicants or residents because of their disability and from treating persons with disabilities less favorably than others because of their disability. The Fair Housing Act also requires housing providers to make reasonable accommodations for individuals with disabilities. A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. An example of a reasonable accommodation may be allowing you to have an emotional support animal or stopping a discharge because you have received treatment to stabilize your condition. A resident must request an accommodation and, if the need for the accommodation is not readily apparent or known to the provider, explain the relationship between the requested accommodation and the disability. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation. If you feel that your housing rights have been violated, you can call the Disability Law Center, file a complaint with the Utah Anti-Discrimination and Labor Division (UALD), file a complaint with the U.S. Department of Housing and Urban Development (HUD), or file a complaint in state or federal court. For more information about housing rights, contact our office or visit our website.
The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC believes in a society where abilities, rather than disabilities, are recognized; all people have an equal opportunity to participate; and where all people are treated with equity, dignity, and respect. We work toward our vision by enforcing and advancing the legal rights, choices, and opportunities of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

If you have further questions, please contact us. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us. Materials are also available in alternative formats such as audio, large-print, Braille and Spanish. Call (800) 662-9080 or apply for help online, and our staff will contact you within 1-3 business days.

View this Resource Online
https://disabilitylawcenter.org/?p=259