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January 12, 2021

[Name of Director]

[Name of Facility]

[Facility Address Line 1]

[Facility Address Line 2]

**Re: Facility Requirements when Discharging Residents**

Dear [Insert Name of Director],

I hope this message finds you well, and that you, your staff, and residents are staying healthy during this challenging time. In case you do not know me, my name is Amanda Scott and I serve as the State Long-Term Care Ombudsman. It is the job of myself and my team to help ensure that the health, safety, welfare, and rights of those residing in skilled nursing and assisted living facilities are protected.

I write to you today due to a startling and emerging trend that I and my colleagues have been witnessing across the State of Idaho of **an increase in improper discharges from long-term care facilities**. Discharges under usual circumstances put already-vulnerable individuals – individuals with physical limitations, cognitive and behavioral challenges, and other needs – at high risk for homelessness, exploitation, and abuse, and the risks to health and safety only intensify during a pandemic. While your facility has the right to discharge residents who have not paid rent or who are not following their admissions agreement and house rules, I am reaching out to every facility across the State to review what requirements have to be followed in the event of a discharge.

I gathered the following information from my colleagues at DisAbility Rights Idaho, Intermountain Fair Housing Council, and Idaho Legal Aid Services, Inc., and share it with you through this letter for informational purposes only. It is always the goal of the Office of the State Long-Term Care Ombudsman to partner with facilities and work to resolve any challenges between facilities and residents before issues escalate, and it is in that spirit of partnership that I share this information.

I greatly respect and appreciate all the efforts you make to ensure that your residents receive the high-quality care that they deserve. Please be in touch if you have any questions or wish to discuss the following information.

Sincerely,

Amanda Scott  
State Long-Term Care  
Ombudsman  
(208) 577-2855

# RESIDENT RIGHTS IN LONG-TERM CARE FACILITY DISCHARGES

## Background

As a Director of a Long-Term Care Facility, you have the right to discharge any resident who presents health and safety concerns to staff or other residents or who fails to pay rent. However, you must follow proper legal procedures in doing so.

As a long-term care facility, you follow the regulations under the Idaho Administrative Code, regularly referred to as IDAPA. However, you must *also* follow all other relevant Idaho laws and regulations, federal Fair Housing laws, as well as some federal laws and regulations if you accept Medicaid funding. Since you already receive direction on your IDAPA obligations from the Idaho Department of Health and Welfare, this letter seeks to provide you with direction on your obligations under state and local law.

## Landlord/Tenant Law

Residents at Long-Term Care Facilities have the same rights as any other tenants in Idaho. Idaho Code 6-303 governs how tenants can be evicted – or discharged – from a property. This part of the law requires at least three days' notice when the eviction is based on non-payment of rent or drug-related activities, and thirty days' notice for all other reasons. These notices must be in writing, and include specific information outlined in the statute. Evictions are never allowed in retaliation for a tenant demanding that a landlord follow landlord/tenant law.

If the resident does not vacate voluntarily within the time allotted by a proper notice, your facility must then turn to the court system to have the resident evicted. *Self-help evictions are illegal in Idaho*, which means you cannot take any action to remove the tenant without a formal court order. To obtain a court order, you must file an unlawful detainer case.

To be clear, this means that – even though immediate evictions are allowed under IDAPA for non-payment of rent or posing health and safety risks – your facility faces legal risk if you evict a tenant without the proper three- or thirty-day notice as required under Idaho Code.

## Fair Housing Act

The federal Fair Housing Act also applies to discharges. The Fair Housing Act is a federal law that protects individuals from discrimination on the basis of race, color, sex, national origin, religion, familial status, and disability. In cases of disability, facilities must work with residents to provide reasonable accommodations and modifications based on the resident's disability, rather than simply turning to discharge as a way to avoid a challenging situation. This means that even if a resident exhibits behavioral challenges or is struggling to comply with coronavirus-related health and safety procedures, your facility must work with that resident to find alternative solutions before turning to discharge. Please, see HUD Guidance at: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/reasonable\\_accommodations\\_and\\_modifications](https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications).

In the case that your facility has no option but to proceed with a discharge because of real threats to other people's health, safety or to property that can't be addressed by a reasonable accommodation, you may have to provide reasonable accommodations – such as additional discharge planning assistance or a longer time period for move out – if a resident's disability makes it challenging for them to comply with the terms of a discharge notice or order for eviction.

## Medicaid Rules

Medicaid also sets certain requirements on how facilities treat residents. If you are a provider who is reimbursed by Medicaid to provide home and community-based services to a Medicaid participant, you must also follow the federal Home and Community Based Settings (HCBS) rules.

Those rules require that individual residents receive, at minimum, the same protections from eviction that tenants have under landlord/tenant law. See the section on landlord/tenant law above for what that entails. In addition, providers may not do the following:

- Force a resident to move out without adequate notice or due process;
- Discharge a resident for an issue that was not included or described in the admission agreement signed by the resident; and
- Use an admission agreement inappropriately to force a resident to waive certain rights under “house rules” (for example, an admission agreement cannot state that a resident is prohibited from having any visitors).

You can find more information about these requirements by contacting the Idaho Department of Health and Welfare Division of Medicaid at 208-334-5747 or visiting their website at <https://healthandwelfare.idaho.gov/>.

When it comes to health and safety concerns about residents, HCBS rules also require seeking person-centered, alternative solutions to discharge, such as implementing risk mitigation strategies or requesting an exception to the requirements. For example, if there is a resident who is struggling to follow coronavirus protocols, your facility might work with them to help them understand the importance of those protocols and comply, or assign specific staff to that resident for greater oversight and limited staff contact.

For more information, please contact the Idaho Department of Health and Welfare’s Division of Medicaid.

## Additional Information

If you would like to dive more deeply into the issues raised above, you can view a training on the topic, available at <https://aging.idaho.gov/wp-content/uploads/2020/12/Resident-Rights-in-discharge-evictions.wmv>.

If your facility wants to confirm you are following all applicable laws and regulations, or if you have residents or family members of a resident with questions about these laws and regulations, please feel to contact my office at the number listed above.

<p>DisAbility Rights Idaho</p> <p>4477 Emerald Street, B-100</p> <p>Boise, Idaho 83706</p> <p>(208) 336-5353</p>	<p>Intermountain Fair Housing Council</p> <p>4696 W. Overland Rd., Suite 140</p> <p>Boise Idaho 83705</p> <p>208) 383-0695</p>	<p>State LTC Ombudsman</p> <p>6305 W. Overland Rd.</p> <p>Suite 110</p> <p>Boise, ID 83709</p> <p>208-577-2855</p>
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