

[put onto letterhead]

January 12, 2021

[Name of Resident]

[Name of Facility]

[Facility Address Line 1]

[Facility Address Line 2]

**Re: Your Rights as a Resident of a Long-Term Care Facility**

Dear [Resident Name],

I hope this letter finds you healthy and well. My name is Amanda Scott and I am the State Long-Term Care Ombudsman. It is my job to help protect the health, safety, welfare, and rights of everyone living in a skilled nursing or assisted living facility in Idaho. I work for you, and I and my colleagues are always here if you have any questions or concerns about the treatment and care you are receiving at your facility.

I write to you today to share some information about your rights. While most people will not experience any problems with their facility, sometimes problems do arise. I am not trying to worry you or scare you; rather, I want to share some information about your rights in case this ever happens to you.

As a resident of a long-term care facility, it is probably not news to you that you have to pay your rent each month and follow the house rules of the facility. In the event that you do not follow these rules, the facility has the right to discharge – or evict – you. However, you have rights throughout the discharge process.

In the attached document, I share some information with you about your rights if you are ever given a notice of discharge by your facility. I hope that you will keep this letter and remember you have it in case you ever need to review it.

Ombudsmen is always here if you have any questions or concerns about the way you are being treated by your facility. If you have issues with your medications, the way staff is treating you, if you are being forced to sign documents that you don't understand, or you are being threatened with discharge, these are all reasons to call your Regional Ombudsman.

I wish you and your loved one's health and happiness.

Sincerely,

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

# KNOW YOUR RIGHTS!

## RESIDENT RIGHTS IN LONG-TERM CARE FACILITY DISCHARGES

### Background

As a resident at a Long-Term Care Facility, you have to pay your rent each month, not use drugs, and follow any requirements listed in the house rules or your admission agreement. If you do not meet these requirements, the facility has the right to discharge you. However, they must follow proper legal procedures in doing so.

Your facility has to follow the regulations under the Idaho Administrative Code, regularly referred to as IDAPA. However, they must *also* follow all other relevant Idaho laws and regulations, federal Fair Housing laws, as well as some federal laws and regulations if you are on Medicaid.

### IDAPA

Under state regulations, a facility can discharge you with thirty days' written notice for violating the terms of your admission agreement or house rules or if they simply want to terminate your lease. The written notice *must* include information about your right to appeal the discharge, how to contact the Office of the State Long-Term Care Ombudsman, and a list of facilities where you may be able to move.

The regulations also allow a facility to discharge you immediately if you have not paid rent, the facility can no longer handle your medical needs, or there are "emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm." In these immediate discharges, you do not have a right to appeal. However, these requirements do not uphold your rights as a tenant in Idaho and should not be used by the facility.

**If the facility tells you that you are being evicted immediately, stay put! Do not leave the facility and call the Office of the State Long-Term Care Ombudsman immediately.** The facility cannot lock you out or force you out without a Court order. See the section below titled "landlord/tenant law" for more information about your rights in an immediate eviction.

### Landlord/Tenant Law

As a resident of a long-term care facility, you have the same rights as any other tenant in Idaho. Idaho Code 6-303 creates the rules for 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 you do not vacate voluntarily within the time allotted by a proper notice, your facility must then turn to the court system to have you evicted. *Self-help evictions are illegal in Idaho*, which means the facility cannot take any action to remove you without a formal court order. To obtain a court order, the facility 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 is not legally allowed to evict you 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 you are exhibiting behavioral challenges, your facility must work with you find alternative solutions before turning to discharge.

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, the facility might still have to provide you with a reasonable accommodation – such as additional discharge planning assistance or a longer time period for move out – if you have a disability that makes it challenging for you to comply with the terms of the discharge notice or order for eviction.

## Medicaid Rules

Medicaid also sets certain requirements on how facilities treat residents. If you are receiving Medicaid, this section might also apply to your facility.

Medicaid 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).

When it comes to health and safety concerns about residents, HCBS rules also require person-centered, alternative solutions to discharge, such as implementing risk mitigation strategies or requesting an exception to the requirements. For example, if you are struggling to follow coronavirus protocols, your facility might work with you to help you comply or develop alternative arrangements to keep everyone safe.

## Contact Information

**If you have received a discharge notice, stay put and call your Regional Ombudsman immediately. Remember: your facility cannot force you out or lock you out unless they have a Court Order.**

### Coeu d'Alene---- -Jan Young

Area Agency on Aging: Northern Idaho  
(208)667-3179

### Pocatello-----Liz Delaney

Area Agency on Aging: Southeast Idaho  
(208)233-4032

### Lewiston----- Becky Lee

Area Agency on Aging: Northern Central Idaho  
(208)743-5580

### Meridian-----Stephanie Persinger

Area Agency on Aging: Southwest Idaho  
(208)898-7060

**Idaho Falls----- Tera Fellows**

Area Agency on Aging: Eastern Idaho  
(208) 522-5391

**Twin Falls-----Marilyn Shiroma**

Area Agency on Aging: South Central Idaho  
(208)736-2122

*This document was supported, in part, by grant No. 90LAEP0001-01-00 from the Administration for Community Living, U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or DHHS policy.*