Office of the
DC Long-Term
Care Ombudsman

LEGAL COUNSEL
for the ELDERLY

OFFICE OF THE DC LONG-TERM CARE OMBUDSMAN

Educating , Empowering, Advocating

CHAMPIONING THE DIGNITY AND RIGHTS OF SENIORS IN WASHINGTON, DC

Involuntary Discharge, Transfer, and Relocation Overview by the Office of the D.C. Long-Term Care Ombudsman

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INTRODUCTION

Generally

The law limits a facility's ability to transfer or discharge a resident. Residents of nursing homes, assisted living residences (ALRs) and community residence facilities (CRFs) are all entitled to receive advance written notice of a proposed discharge, transfer, or relocation initiated by the facility. A transfer or discharge is considered "involuntary" whenever it is initiated by the facility. All residents are entitled to counseling and assistance prior to a discharge and a discharge plan needs to be implemented with the facility.

- Applicable Laws

  42 U.S.C. 1395i-3(c)(2), 1396r(c)(2)

  42 C.F.R. 483.12 – Nursing Homes

  D.C. Law 6-108 – Nursing Homes, CRFs, and ALRs

  Title 22 DCMR Chapter 32 (nursing homes), Chapter 34 (CRFs licensed by DOH), Chapter 38 (CRFs licensed by DBH)

  Assisted Living Residence Regulation Act of 2000 – ALRs

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TYPES OF ACTIONS

Discharges

A discharge occurs when a resident is required to leave the facility permanently and thus must have an appropriate location of his or her choice. A resident cannot be discharged to a hospital

Transfers

A transfer occurs when a resident is temporarily moved to a hospital or for therapeutic leave (e.g., overnight visit with family or friends). All movements to hospitals are considered transfers.

Relocations

Relocations mean moving a resident to a different room within the same facility.

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Allowable Reasons for Transfer or Discharge

The law allows a facility to initiate a transfer or discharge of a resident only in one of six situations:

- The facility cannot meet the resident's needs;
- The resident no longer needs nursing facility services;
- The resident's presence endangers the safety of others in the facility;
- The resident's presence endangers the health of others in the facility;
- The resident has failed to pay; or
- The facility is closing.

- Non-payment (#5) only applies if the resident does not submit the necessary paperwork for third-party payment or after third party denies the claim and the resident refuses to pay for his or her stay

Notice and Appeal Requirements

Required Notice before Transfer or Discharge

- The law requires that facilities provide written notice of proposed transfers or discharges to the resident, resident representative, and the Long-Term Care Ombudsman program

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Content of the Notice

- If a resident is to be transferred or discharged, the facility must record the reason for transfer in the resident's clinical record, and must notify the resident and resident representative in writing.
- The notice must be written in a manner understood by the resident and representative, and must include:
- The name of facility, name of resident and name of resident's representative,
- The reason for the transfer/discharge,
- The proposed effective date,
- The location to which the resident will be transferred or discharged,
- Information on the person supervising the discharge,
- Information on the resident's appeal rights,
- A hearing form, and
- Contact information for the Long-Term Care Ombudsman program.
- The location the resident will be moved to must be specific, appropriate, available, and agreeable to taking the resident.

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TIMING OF THE NOTICE

- Notice generally must be given at least 30 days before the proposed transfer or discharge. Except for emergency or compelling circumstances, and as defined by law, the time requirements for advance notice must be met prior to the moving of residents.
- A few exceptions apply to the general 30-day notice rule, which include:
- A relocation only requires a 7 day notice before relocation.
- Section 44-1003.02 requires notice to be given to a CRF resident at least 21 days before discharge.

APPEAL RIGHTS

- The resident has the right to appeal any involuntary discharge, transfer or relocation. If the decision is to discharge the resident from the facility or to transfer the resident to another facility, the resident has seven (7) calendar days from the day the notice was received to request a hearing and to complete the hearing request form enclosed within the notice. If the decision is to relocate the resident within the facility, the resident has five (5) calendar days to request a hearing.
- If the resident requests a hearing, it will be held no later than five (5) calendar days after the request is received in the mail; and in the absence of an emergency or other compelling circumstances, the resident will not be moved before a hearing decision is rendered.

ADDITIONAL RIGHTS
BED-HOLD AND RETURNING TO THE FACILITY

- Medicaid recipients have the right to return to their facility after they have been out of the facility due to hospitalization or therapeutic leave. Medicaid Beneficiaries in D.C. receive 18 bed-hold days per year (Oct. 1 – Sept. 30). If a Medicaid recipient loses a bed because they have exceeded the bed hold period of 18-days, readmission rights permit him or her to return to the next available bed in the facility.
- Residents are entitled to notice about bed-hold and readmission rights twice – upon admission and at the time of transfer. A facility's bed hold policy must be consistent with state regulations.

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Preparation before transfer or discharge

- The facility must provide discharge planning and sufficient preparation and orientation to residents being transferred or discharged. The facility is responsible for developing a post-discharge care plan designed to ensure the individual's needs will be met after discharge from the facility. The nursing home should also prepare an orientation, such as a visit to the new home, and assure a safe arrival. The facility should also inform the new residence about the resident's needs, preferences and habits.

Preparation before transfer or discharge- Cont.

In 2010, D.C. law was changed and now facilities are required:

- Discharge Assessment within 14 days
- Upon oral and written notice of a discharge, the following: a current assessment of resident's care needs, services needed upon discharge and information about resident's rights to receive counseling about community-based care in the home. There is also a right to request that the facility arrange at least one visit to one facility and a discharge plan with this information.
- Discharge Planning Meetings can be productive in developing a solid plan for a safe and successful discharge.

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What DCLTCOP looks for when we review the Notice of Discharge, Transfer and Relocation:

General:

1. Timeliness of Notice: All forms need to be sent to our office before the appeal deadline. The appeal deadline is 7 days for a discharge or transfer and 5 days for a relocation. Notices should not be sent to our office past this deadline and should be sent to our office as soon as possible after being provided to resident and resident's representative.

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What DCLTCOP looks for when we review the Notice of Discharge, Transfer and Relocation:

Contents of Notice:

1. **Name of Facility & Names of Resident and Resident's Representative** must be on the form.
2. **Proposed Action (discharge, transfer or relocation)** should be marked and should be correct.
3. **Specific Grounds/Reason for Action:** Reason for discharge, transfer or relocation must be in detail, not vague. You should understand why that this person is leaving.
4. **Date of Discharge/Transfer or Relocation** must be provided. For discharges, nursing home and ALR residents are given a 30 day notice. Advance notice can be less if resident consents or it is in an emergency. However, a written notice must be issued.
5. **Destination/Location** needs to be provided. It should be clear and concise - not "home" or "in community". Homeless shelters are never acceptable.
6. **Person Supervising Discharge.** This must be complete with all information.
7. **Signatures should be included, but not required**. However, there should be some notation that resident and resident's representative received the notice.
8. **Appeal Rights** must be included.
9. **Bed-Hold Policy** must be included for all transfers.
10. **Hearing Form** must be included.

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DOH Notice of Discharge Transfer or Relocation Form

DC GOVERNMENT

Submitted On:

Today's Date	March 1, 2023
Name of Facility	Happy Days Assisted Living
Address of Facility	0000 Happy Lane Washington, DC 00000
Facility Email Address	happydays@gmail.smile
Facility Phone Number	202-222-2222
Resident's Name	Ms. Rhonda Resident
Resident's Representative	Ms. Rep Representative
Representative's Email	reprep@gmail.com
(1) This proposed action is a	Discharge based on dangerous behavior
(2) Must list specific reason(s) for this action:	Actions are dangerous to the resident and others
(3) You are scheduled to be discharged, transferred or relocated on or by (date)	March 18, 2023
(4) Your destination is	TBD
(5) If you are being transferred to a hospital or the transfer is for therapeutic leave, attached is this facility's bed-hold policy. Your available number of bed-hold days is:	
(6) The following person from the facility is responsible for supervising the discharge, transfer or relocation:	Ms. Staffer
7) Other pertinent information, if applicable:	
Provider's signature	
Full Date	
Resident's signature	
Full Date	
Resident's representative signature	
Full Date	

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- The Office of D.C. Long-Term Care Ombudsman has been conducting staff trainings on Involuntary Discharge, Transfer and Relocation Notices. A principal question we incurred concerned how to correctly complete the box which asks for "Provider Signature." Did this have to be the administrator and is a signature required? We contacted DC Health and received the following response:

- **Pursuant to D.C. Official Code § 44–1003.02(a), "[w]henever a resident is to be discharged, transferred, or relocated, *a facility representative* shall give that resident and his or her representative both oral and written notice of the reasons for, procedures for contesting, and proposed effective date of the discharge, transfer, or relocation." (Emphasis added). The relevant laws and regulations do not require that the facility representative issuing the notice be either the DON or the facility's administrator. Therefore, the issuing representative (or "provider") could be any staff member so authorized by the facility's own operating guidelines. Concerning the signature line in section 7 of the form, DC Health does not currently require a physical signature for the provider, a typed name is sufficient.**

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QUESTIONS?

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Contact information

- Website: www.aarp.org/LCEOmbudsman
- Helpline: 202-434-2190
- Email: dcobuds@aarp.org
- Fax: 202-434-6595

Supported in part by DACL Department of Aging and Community Living

Office of the DC Long-Term Care Ombudsman

Legal Counsel for the Elderly

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