



## **How to Appeal a Nursing Home Notice of Discharge**

### **Can a Nursing Home Discharge or Transfer me?**

A nursing home can discharge or transfer you for one of these six reasons:

1. It is necessary for your welfare because your needs cannot be met after reasonable attempts at accommodation in the nursing home;
2. It is appropriate because your health has improved sufficiently so you no longer need the nursing home's services;
3. The safety of individuals in the facility is endangered;
4. The health of individuals in the facility is endangered;
5. The facility is closing and the closure plan has been approved by the Department of Health; or
6. You have failed to pay for your stay, after reasonable notice and appropriate notice.

For the first three reasons, the discharge must be documented by your doctor in the nursing home's clinical record.

If the basis of the termination notice is a failure to pay, keep in mind –

- Payment may be made by Medicaid, Medicare, or a third party insurance carrier, depending upon the circumstances;
- If you became eligible for Medicaid after being admitted to the nursing home, the facility may only bill you for certain charges under Medicaid.

### **Can I Appeal the Nursing Home's Decision to Discharge or Transfer me and How?**

- **If you receive a Notice of Discharge from your nursing home, you can request an appeal by calling the Department of Health as soon as possible at 888-201-4563.**
- You can also fax or write to the Department of Health to request the appeal:

Fax: 518-408-1157  
Address: Department of Health Centralized Complaint Intake Program  
875 Central Avenue  
Albany, NY 12206

You must request an appeal within 60 days of receiving the Notice. However, if you request an appeal before the transfer or discharge date, the nursing home cannot transfer or discharge you until you have a hearing, unless the nursing home says you are an imminent danger to others or if you need urgent medical care.

## **Do I have the Right to a Hearing?**

Yes. Once you request an appeal, the Department of Health will schedule a hearing.

## **How do I prepare for a hearing?**

- ✓ You have the right to examine the contents of your nursing home file before the hearing, including medical records.
- ✓ You have the right to examine in advance all documents and records that the nursing home plans to use at the hearing.
- ✓ The reason for your discharge must be recorded in your clinical record.
- ✓ You may seek a second opinion from an outside doctor if you disagree with the nursing home's assessment of you.
- ✓ You can request assistance preparing for the hearing, including from the Long Term Care Ombudsman and/or Mobilization for Justice.
  - The Long Term Care Ombudsman program's contact information should be on your termination notice.
  - Mobilization for Justice can be reached toll-free at (855) 444-6477.
- ✓ You may request more time to prepare for the hearing if you need it. It will be up to the Department of Health Administrative Law Judge (ALJ) whether to give more time.

## **What happens at the hearing?**

- ✓ The hearing is usually held at the nursing home.
- ✓ The hearing is usually recorded.
- ✓ The ALJ will hear both sides.
- ✓ At the hearing, the nursing home has the burden of proving that the discharge is necessary and the discharge plan is appropriate.
- ✓ The nursing home will present its evidence and witnesses first.
- ✓ The ALJ must issue a decision in writing after the hearing.

## **What are my rights at the hearing?**

- ✓ You may represent yourself or use legal counsel, a relative, a friend, or other spokesperson.
- ✓ You have the right to bring witnesses.
- ✓ You have the right to question the nursing home's witnesses.
- ✓ You have the right to present your own evidence.
- ✓ You have the right to present an argument without undue interference.
- ✓ You have the right to question or refute any testimony or evidence.

## **What if I need help with my appeal?**

You can call Mobilization for Justice at (855) 444 – 6477 on Tuesdays from 10 am to 5 pm with any questions you have.

**DISCLAIMER: This fact sheet gives general information for NYC residents; it is NOT legal advice.**