



# EFE FACT SHEET – Long-Term Care Facilities

## INVOLUNTARY DISCHARGE FROM LONG-TERM CARE FACILITIES IN ILLINOIS

Statutory Reference: Nursing Home Care Act: 210 ILCS 45/3-401; CMS Regulations, Requirements for Long Term Care Facilities Transfer and Discharge Rights: 42 CFR 483.12

### THE RIGHT TO CONTINUE LIVING IN THE FACILITY

As a resident of a long-term care facility in Illinois you are guaranteed certain rights by state and federal law, including the right to continue living at the facility. As a resident, you can only be involuntarily discharged for one of these six reasons:

- Your medical needs cannot be met by the facility;
- Your health has improved so that you no longer require the facility's services;
- Your physical health or safety is at risk;
- The safety of others is at risk if you remain;
- You have not paid or are late paying the facility's bill; or
- The facility closes.

### THE RIGHT TO RECEIVE WRITTEN NOTICE OF DISCHARGE

If a facility requests that you be discharged, it must give you or your representative a written notice at least 21 days before the discharge date. The notice should be provided to you on a form called "Notice of Involuntary Transfer or Discharge Pursuant to the Nursing Home Care Act." If the written notice is not given to you, you should request it. This form advises you of your right to appeal the discharge.

**ALERT: BY MOVING FROM THE FACILITY AND NOT REQUESTING THE NOTICE AND APPEALING THE DISCHARGE, YOU MAY BE AGREEING TO A VOLUNTARY TRANSFER.**

The written notice must be on an Illinois Department of Public Health form with information in a language or manner that you understand and include:

- **Why** the facility wants you to move;
- The **date** of the discharge;

- The **person responsible** for supervising the transfer or discharge;
- How to file an **appeal** to the Illinois Department of Public Health;
- A hearing request **form** with a stamped, addressed envelope for you to mail the appeal to the Illinois Department of Public Health;
- The name and contact information for the State **Longterm Care Ombudsman**; and
- The notice must be copied and placed in your record.

## EXCEPTIONS TO THE RIGHT TO RECEIVE WRITTEN NOTICE

There are two situations when the facility does not have to give you written notice:

- **Emergency:** The minimum 21-day written notice is NOT required when your attending physician orders an emergency transfer or discharge because of your health care needs; or
- **Safety of Others:** The minimum 21-day written notice is NOT required when the transfer or discharge occurs for the physical safety of other residents, the facility staff or facility visitors. When a discharge happens for this reason, the facility must notify the Illinois Department of Public Health before the discharge or transfer. The Illinois Department of Public Health should immediately offer transfer, or discharge and relocation assistance to you.

## THE RIGHT TO DISCUSS THE PLANNED INVOLUNTARY DISCHARGE

- The facility must meet with you, your representatives and any agency responsible for your admission into the facility to discuss the involuntary discharge or transfer and to explain the reasons for the discharge.
- The discussion must be summarized in writing and include the names of the people participating in the meeting. The written summary, including the reasons for the discharge, must be included with your records.

## THE RIGHT TO APPEAL THE DISCHARGE AND THE HEARING UNDER STATE OR FEDERAL LAW

- You have the right to appeal the discharge to the Illinois Department of Public Health and to have a hearing.
- You should file the appeal and request a hearing with the Illinois Department of Public Health within 10 days of receiving the written notice of discharge. This is done by completing and mailing the form that the facility gives you with the notice of discharge.
- The Illinois Department of Public Health should hold a hearing at the facility within 10 days from when you filed the request for a hearing.
- A Department of Public Health hearing officer will travel to the facility to hear from the facility why it believes you should move and to hear from you why you believe that you should stay. The facility has the burden to prove that one of the six reasons for discharge or transfer listed above exists.

## THE HEARING OFFICER'S DECISION AND NEXT STEPS

- A decision should be made by the Illinois Department of Public Health within 14 days after you filed the appeal and request for a hearing.
- The facility cannot make you leave until your appeal is decided by the Illinois Department of Public Health.
- If the Department of Public Health decides you should be discharged, you should not be required to leave the facility before the 34th day following the day when you received the written notice of discharge or the 10th day after the Illinois Department of Public Health's decision, whichever is later.

## THE RIGHT TO A SAFE DISCHARGE OR TRANSFER

- Before a facility can discharge or transfer you, the facility and the Department of Public Health must prepare you to be sure that the discharge is safe and that the new setting is appropriate for you.
- You have the right to be involved in the planning and transfer or discharge, to visit other facilities and to choose among available alternative facilities, except in emergency discharges.
- The facility you are being discharged from must offer you counseling services before the transfer or discharge.

## THE RIGHT TO RETURN TO THE LONG-TERM CARE FACILITY AFTER HOSPITALIZATION

- You must be allowed to return to the facility after being hospitalized, unless a written Notice of Involuntary Transfer or Discharge is given to you by the facility.
- If you receive Medicaid and are hospitalized for 10 days or less, you must be allowed to return to the facility when you are released from the hospital, even if the facility has given you a written Notice of Involuntary Transfer or Discharge, except under an emergency discharge.
- If you receive Medicaid and are hospitalized for more than 10 days, the facility must let you return if there is a bed available and you still require the kind and level of care provided by the facility, except under an emergency discharge. If the facility is full and you still require that level of care, you must be allowed to have the first available semi-private room.

## RIGHT TO MAKE PAYMENT

- When your failure to make a payment to the facility is the reason for involuntary discharge or transfer, you have the right to pay the facility for the services provided to you up to the date of the planned discharge or transfer.
- If you pay, you then have the right to stay in the facility.
- If you are a Medicaid recipient and the Department of Healthcare and Family Services has taken action against you that will negatively impact your benefits, the facility may not discharge you for that reason if you have appealed the Department of Healthcare and Family Service's action. The 21 day notice period

for discharge from the facility begins after the Department of Healthcare and Family Services has made a decision on your appeal.

## AVAILABLE RESOURCES

- A Long-Term Care Ombudsman protects and promotes the rights and quality of life for people who reside in long-term care facilities. The Ombudsman is available to help in appealing the involuntary transfer or discharge. You can contact the Ombudsman by calling **1-800-252-8966** or **1-888-206-1327 (TTY)**.
- You can also ask Equip for Equality for help if you think your rights have been violated in the involuntary transfer or discharge process. Call **1-800-537-2632** or **1-800-610-2779 (TTY)**.
- The Illinois Department of Public Health provides relocation assistance and information on alternative placements. Call **217-782-5180**.



### DO YOU HAVE A QUESTION?

Contact Equip for Equality (all services are free of charge):

800.537.2632 (voice) or 800.610.2779 (TTY)

[Contactus@equipforequality.org](mailto:Contactus@equipforequality.org)

[www.equipforequality.org](http://www.equipforequality.org)

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities.