



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
Office of Health Care Quality
Bland Bryant Building • Spring Grove Center
55 Wade Avenue • Catonsville, Maryland 21228

TO: Administrators of Comprehensive and Extended Care Facilities
FROM: Carol Benner, Director, Office of Health Care Quality
SUBJECT: **Notice of Proposed Involuntary Discharge or Transfer**
DATE: May 19, 2000

Attached please find a newly revised "Notice of Proposed Involuntary Discharge or Transfer." Please begin using this notice immediately for all proposed discharges or transfers.

As you can see, the one major change in this notice is the inclusion of a mediation option for the resident which would be held prior to a hearing. Mediation has several distinct advantages for the nursing facility as well as the residents. First, a nursing home need not be represented by an attorney at the mediation. Thus, if a proposed solution is agreeable to both the facility and the resident, the facility would have avoided costly attorney fees. Second, a proposed solution could well be reached sooner than through a hearing where a written decision needs to be issued by an administrative law judge. Finally, a mediation provides a less adversarial setting in which mutually agreeable results can be achieved without the time and expense of a contested hearing.

This notice has been shared with staff of both the Health Facilities Association of Maryland and Maryland Association of Non-Profit Homes for the Aged. They agree that the option of mediation benefits both the facility and the resident.

If you have any questions, please contact your survey coordinator.

NH: 00-001

Resident
Resident's Address

Date

RE: Notice of Proposed Involuntary Discharge or
Transfer

Dear _____:

This is to notify you of our intent to discharge you from this facility on or after 30 days from the date you receive this notice. (NOTE: If you are being discharged from a nursing facility which is part of a "Continuing Care Retirement community" (CCRC) to a location outside of the CCRC, you are entitled to additional protections which are set forth in Article 70B of the Annotated Code of Maryland. If you have any questions about your rights as a CCRC resident, please contact the Maryland Department of Aging at (410) 767-1119.

The reason(s) for the proposed discharge or transfer are as follows:

- _____ Your welfare and needs cannot be met in this facility.
- _____ Your health has improved sufficiently so that you no longer need the services provided by this facility.
- _____ The safety of individuals in this facility is endangered by your continued stay.
- _____ The health of individuals in this facility is endangered by your continued stay.
- _____ You have failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid) for a stay at this facility.
- _____ This nursing facility is ceasing to operate.

You have the right to a hearing regarding this involuntary discharge. You may also request mediation. If you or your representative elect to request a hearing or a hearing and mediation, the request must be made within thirty (30) days of receipt of this notice of intended action. Please be sure to indicate clearly whether you are requesting a mediation and a hearing or a hearing only. The request for a hearing, or the request for mediation and a hearing must be mailed to:

Docket Specialist, Unit A
Maryland Office of Administrative Hearings
Administrative Law Building
11101 Gilroy Road
Hunt Valley, Maryland 21031

If both mediation and a hearing are requested, both will be scheduled. However, the mediation will be scheduled to take place before the hearing. A mediation meeting about your discharge would be held before a qualified mediator of the Office of Administrative Hearings (“OAH”). The mediator would informally discuss the basis for the discharge and assist you and the nursing home in reaching a resolution. Both you and the nursing home would have to agree to the resolution of this matter.

If the mediation is successful, the mediation agreement will constitute the final disposition and the hearing will be cancelled.

However, if either party is not satisfied with the proposed resolution, a hearing will then be held before an administrative law judge (“ALJ”) at the OAH or at the nursing home. No information about the mediation, the proposed resolution, or the process can or will be revealed to the ALJ who holds the hearing. You may continue to reside in this facility pending the outcome of the hearing.

You have the right to consult with any lawyer. There are legal assistance agencies which may help you including:

Legal Aid Bureau, Inc.
Nursing Home Program
29 W. Susquehanna Avenue, Suite 305
Towson, Maryland 21204-5201
1-800-367-7563 or (410)-296-6705

Local Legal Aid Bureau
(Facility: Please provide address & phone number)

The Older American Act Senior Legal Assistance Program
(Facility: Please provide address & phone number)

The Maryland Disabilities Law Center
1800 N. Charles Street, Suite 204
Baltimore, Maryland 21201
(410) 234-2794

In addition, the following agencies may be of assistance to you in this matter:

Maryland Department of Aging
301 W. Preston Street, Room 1007
Baltimore, Maryland 21201-2374
1-800-243-3425 or (410) 767-1100

Local Office on Aging, Long-Term Care Ombudsman
(Facility: Please provide address & phone number)

A copy of this notice is being provided to the following persons and organizations at the same time that it is being given to you:

1. Your interested family member(s), guardian, or any other individual known to have acted as your agent and/or representative.
2. Your local Long-Term Care Ombudsman.
3. The Complaint Unit of the Office of Health Care Quality, Department of Health and Mental Hygiene, State of Maryland.

A decision by an Administrative Law Judge on a proposed discharge or transfer of a resident, unless appealed, is final and binding on all parties. The decision may be appealed in accordance with §10-222 of the State Government Article but the appeal does not automatically stay the decision of the Administrative Law Judge.

Notwithstanding a final decision upholding a discharge, you may only be discharged if the following has occurred. Within 48 hours prior to your discharge, the facility must provide:

1. A comprehensive medical assessment and evaluation of you including a physical examination documented in your medical record;
2. A post-discharge plan of care developed where possible with you and your guardian, family, or representative's participation;
3. Documentation by your attending physician that the transfer or discharge is in accordance with the post-discharge plan of care and that it is not contraindicated by your medical condition.

In addition, you may only be discharged if the transfer or discharge is in accordance with the post-discharge plan of care and is to a safe and secure environment where you will be under the care of another licensed, certified, or registered care provider, or other person who has agreed in writing to provide you with a safe and secure environment.

In addition, at the time of your discharge, the facility must give you:

1. Your medical assessment and post-discharge plan of care;
2. A written statement itemizing the medications that you are currently taking;
3. To the extent permitted by law, at least a three-day supply of any medications that you are currently taking;
4. Information to assist you in obtaining additional prescriptions through consultation with your attending physician; and
5. A written statement of the date, time method, mode and destination of your discharge.

(NOTE: If you are being transferred from a nursing facility which is part of a CCRC to a lesser level of care within the CCRC and the transfer is approved by your attending physician, the facility is not required to give you the 5 listed items above prior to your discharge.)

The facility must also provide you with information about your rights to make decisions concerning health care, including: 1) the right to accept or refuse medical treatment; 2) the right to make advance directives, which includes either making a living will or appointing an agent to make health care decisions; and 3) the right to revoke an advance directive.

If the facility meets its obligations as set forth above, please note that you, your guardian, family or representative must cooperate and assist in the discharge planning process by:

1. Contacting, cooperating with, and assisting other facilities considering admitting you; and
2. Cooperating with governmental agencies which includes applying for Medical Assistance for you.

_____ (Date)

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If the facility violates any of its legal obligations regarding transfer and discharge, it may be subject to a substantial monetary penalty. Similarly, a member of your family or legal representative who fails to meet his or her obligations may also be subject to a substantial monetary penalty.

Sincerely yours,

(Signature of administrator or authorized representative)

cc: _____,
_____,
_____.

(Resident's representative, agent and /or family member(s))
Local Office on Aging, Long Term Care
Ombudsman
DHMH, Office of Health Care Quality,
Complaint Unit