

Advisory

HEALTH CARE DEPARTMENT | JULY 2011

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Recent Changes to Nursing Home Transfer/Discharge and Bed Hold Requirements Now in Effect

Public Act 11-236 (the “Act”) makes several changes to the Connecticut statutes governing nursing home bed holds and involuntary transfers and discharges. The Act took effect when the Governor signed it on July 13, 2011.

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NEW TRANSFER/DISCHARGE REQUIREMENTS

Time Period for Resident Appeals

Except in an emergency, nursing facilities are required to provide written notice of an involuntary transfer or discharge not less than 30 days and not more than 60 days prior to the proposed transfer or discharge. The Act does not change these timeframes, but it does give residents more time to appeal an involuntary transfer or discharge.

- Under prior law, a resident had 10 days from receipt of the Notice of Involuntary Transfer or Discharge to appeal and stay the transfer or discharge. Residents now have more time -- 60 calendar days -- to appeal, but the transfer/discharge will be stayed only if the resident files the appeal within 20 days of receiving the Notice.
- The Department of Social Services (“DSS”) can extend the 20-day timeframe if the resident demonstrates that the failure to appeal within the 20-day period was for “good cause.”

The Act also requires DSS to decide appeals more quickly: within 30 days (reduced from 60 days) after the appeal hearing ends or within 60 days (reduced from 90 days) after the hearing was requested, whichever is sooner.

Special rules apply to appeals and hearing decisions for emergency transfers/discharges.

Definition of “Self-pay”

By law, a nursing facility may discharge a self-pay resident for nonpayment or arrearage of more than 15 days.

- The Act clarifies that a “self-pay resident” is a resident who does not receive state or municipal assistance to pay for care at the facility. However, “self-pay resident” does not include a Medicaid-pending resident who has filed a Medicaid application with DSS and has timely responded to requests by DSS for information necessary to determine eligibility.
- By reverse inference, a nursing facility may consider as a “self-pay resident” a Medicaid-pending resident who has *not* responded timely to requests by DSS for additional information necessary to determine eligibility (and provided the resident is not receiving other state or municipal assistance to pay for his or her care). In these cases, a nursing facility would be permitted to issue a Notice of Involuntary Transfer or Discharge due to nonpayment.

continued next page

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Deficient Notice

Under prior law, if a nursing facility's Notice of Involuntary Transfer or Discharge was defective and the resident appealed, the parties would dispute the sufficiency of the Notice at the hearing. Now, DSS is required to return a deficient Notice to the issuing facility; the proposed transfer or discharge is stayed; and the facility must issue a new, compliant Notice if it wishes to proceed with the transfer/discharge.

Level of Care Determinations

The Act permits a nursing home resident to request a hearing by DSS when the resident receives a notice from DSS that (i) the resident no longer needs the level of care provided by the facility, and (ii) consequently, Medicaid coverage for the resident's stay will end. If the resident requests a hearing before the date on which Medicaid coverage is to end, Medicaid coverage must continue pending the outcome of the hearing.

The Act also provides that if a resident has received and is contesting both a notice of denial of Medicaid coverage from DSS and a Notice of Involuntary Transfer or Discharge from the nursing facility, DSS may schedule a single hearing to address both issues.

NEW BED HOLD REQUIREMENTS

"First Bed Available"

By law, when a nursing home resident is hospitalized for longer than the mandatory bed-hold period (or the facility is not required to hold the resident's bed), the facility must admit the resident to the "first bed available" when the resident is discharged from the hospital.

The Act modifies this requirement to provide that a nursing facility must admit the resident to the first bed available *in a semiprivate room or in a private room, if a private room is medically necessary*. This means that if the only beds available are in private rooms, the nursing facility is not required to readmit the resident until a bed in a semi-private room becomes available, unless a private room is medically necessary for the resident.

New Consultative Process

The Act establishes a new consultative process that nursing facilities and hospitals must follow when the bed-hold period has expired (or the facility is not required to hold the resident's bed) and the nursing facility has concerns about readmitting the resident from the hospital based on whether the facility can meet the resident's needs or whether the resident may be a danger to himself or herself or others. In such circumstances, a nursing facility must:

- Not later than 24 hours after receiving notice from the hospital that the resident is medically ready for discharge, request a consultation with the hospital and the resident or the resident's representative for the purpose of developing an appropriate care plan to safely meet the resident's needs. The resident's wishes and the hospital's recommendations must be considered as part of the consultative process;
- Begin the consultation as soon as practicable, and complete the consultation within 3 business days after requesting it; and

continued next page

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- Hold a bed for the resident while the consultation process is ongoing (i.e., the first bed available in a semi-private room or in a private room, if a private room is medically necessary for the resident).

The hospital must participate in the consultative process and must provide the nursing facility with access to the resident and the resident's hospital records. In fact, the Act amended the statute governing hospital discharge planning to require that whenever a hospital refers a patient's name to a nursing home or a patient requests a referral for discharge planning purposes, the hospital must make a copy of the patient's hospital record available and must allow the nursing home access to the patient for care planning and consultation.

» **Refusal to Readmit**

A nursing facility may refuse to readmit a resident following the consultative process, but only if the facility determines that:

- it cannot meet the resident's needs;
- the resident no longer requires the facility's services due to improved health; or
- the health and safety of other residents would be endangered if the resident was readmitted.

» **Notice**

Within 24 hours of deciding not to readmit a resident for one of the above reasons, the facility must notify the hospital, the resident, and the resident's representative or other responsible party of its decision. This Notice of Decision Not to Readmit must be in writing and must indicate:

- the reason for the facility's decision not to readmit the resident;
- that the resident has 20 days from receipt of the notice to appeal the decision to DSS, which period may be extended for good cause;
- that the resident has the right to represent himself or herself at the appeal or to be represented by legal counsel, a relative, a friend, or other spokesperson;
- the name, mailing address and telephone number for the Long-Term Care Ombudsman; and
- if the resident is, or the facility alleges that the resident is, mentally ill or developmentally disabled, the name, mailing address and telephone number for the Office of Protection and Advocacy for Persons with Disabilities.

» **Resident's Right to Appeal**

As noted above, a resident has 20 days from the date of receipt of the Notice of Decision Not to Readmit to appeal to DSS. DSS may extend this timeframe for good cause.

- DSS must hold a hearing within 15 days after receiving the resident's request for an appeal.

continued next page

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- DSS must issue a decision on the appeal not later than 30 days after the date on which the hearing record closes.

A resident may also, or alternatively, file a complaint with DSS about a facility's refusal to readmit the resident from the hospital. DSS must investigate any such complaint filed and may impose penalties if it determines that the nursing facility's refusal to readmit the resident violated bed-hold statutory requirements. Each day a nursing facility fails to readmit a resident in violation of the bed-hold law is a separate violation for penalty purposes.

ACTION STEPS

Nursing facilities should take the following steps now in order to comply with the new transfer/discharge and bed-hold requirements:

- **Revise the Notice of Involuntary Transfer or Discharge** to reflect the new timeframe for resident appeals (60 calendar days) and to inform the resident that (i) he or she must initiate an appeal not later than 20 days after receipt of the notice to stay the proposed transfer/discharge, and (ii) DSS may extend the 20-day timeframe for good cause. Please visit http://www.wiggin.com/files/20429_Notice%20of%20Involuntary%20Transfer%20of%20Discharge.pdf for an updated model Notice.
- **Take steps to ensure that the facility uses only the updated Notice of Involuntary Transfer or Discharge.** For example, dispose of all copies of the old Notice and mark electronic files containing the old Notice with "DO NOT USE" or a similar notation. If an old version of the Notice is mistakenly provided to a resident, the Notice will be invalid, DSS will stay the proposed transfer/discharge, and the facility will need to provide a new, compliant Notice of Involuntary Transfer or Discharge.
- **Develop a new Notice of Decision Not to Readmit.** Although this Notice has requirements similar to the requirements for the Notice of Involuntary Transfer or Discharge, different appeal timeframes apply. In addition, a copy of the Notice of Decision Not to Readmit must be provided to the resident and his or her legally liable relative or other responsible party as well as to the discharging hospital. For these reasons, we have developed a separate Notice of Decision Not to Readmit. Please visit http://www.wiggin.com/files/20427_Notice%20of%20Decision%20Not%20to%20Readmit.pdf to view.
- **Revise facility policies and procedures, or develop new policies and procedures,** as necessary to reflect the new consultative process that must be followed when a nursing facility has concerns about readmitting a resident from the hospital based on whether the facility can meet the resident's needs or whether the resident may be a danger to himself or herself or others.
- **Train appropriate staff members** on the new consultative process and on the use of the revised Notice of Involuntary Transfer or Discharge and the new Notice of Decision Not to Readmit.

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