

# Understanding Your Rights in a Nursing Home

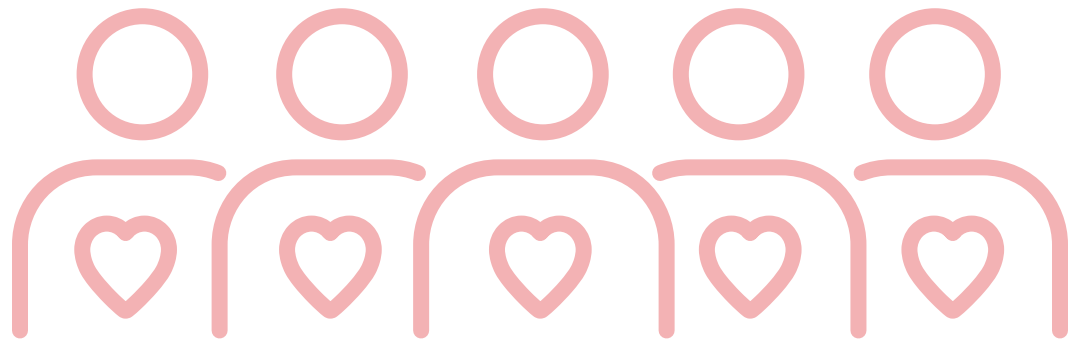
**Payment, Room Transfers, Debt  
Collection, and Discrimination**



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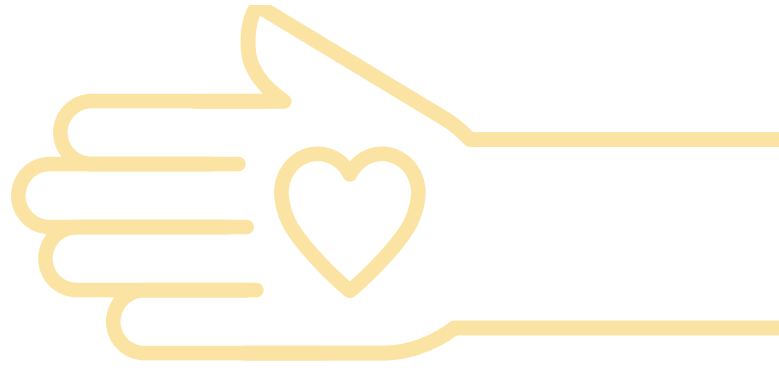


## Nursing Home Rights

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*All residents of nursing homes or long-term care facilities have rights.*

The Connecticut Long Term Care Ombudsman Program (LTCOP) works to protect and advocate for the rights of residents of nursing homes and long-term care facilities. All Ombudsman activity is performed on behalf of, and at the direction of, residents. This guide provides information on the Nursing Home Reform Act (NHRA), which is one significant federal protection in place.



## How You're Protected

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### *Facilities Covered by the NHRA*

The NHRA applies to every nursing home that is certified to accept payment from Medicare and/or Medicaid programs, even if the resident involved is not utilizing Medicare or Medicaid payment. Because Medicare and Medicaid are important sources of payment, almost all nursing homes are governed by the NHRA.

### *Contracts and Financial Responsibility*

Nursing home admission is often a time of crisis and may be very emotional. During this difficult time, applicants, their family members, and those supporting them are presented with many forms to sign, including a lengthy and complicated admissions contract. They may be asked to sign immediately without being given an opportunity to fully review the document.



### HERE'S WHAT TO KNOW:

- If possible, avoid signing documents while at the nursing home facility. There is no requirement to do so. Take the contract home and review it carefully.
- It is illegal for any nursing home facility to discriminate against a resident based on where their payment is coming from. This discrimination can occur when individuals are treated differently or denied services based on how they pay—whether through private insurance, Medicare, Medicaid, or out-of-pocket payments (private pay).
- The NHRA prohibits nursing homes from requiring third-party guarantees of payment and co-signers as a condition of admission to a nursing home.
- Nursing homes are allowed to require a resident's representative, who has legal access to the resident's funds, to sign an agreement promising to pay the nursing home from the resident's funds. The agreement cannot make the representative personally liable for the resident's bill.



## *Financial Information for People Supporting Residents*

When it comes to financial responsibility, terms like “responsible party” are often used in nursing home admission agreements. The agreement might try to define a “responsible party” as someone who is financially responsible, instead of someone who only wants to be available to help the resident and make decisions for the resident.

### **HERE’S WHAT TO LOOK OUT FOR:**

**Caregiver financial liability.** Some nursing home admissions contracts say that a family member or person supporting the resident, must pay the resident’s bill if the resident can’t afford to. Under the NHRA, nursing homes can’t ask or require that person to use their own money to pay for someone else’s nursing home bill.

**Responsibility for payment.** Even if a family member or support person has access to the resident’s money as their power of attorney or legal guardian, the nursing home can’t make them promise to pay for the resident’s care with their own money.



**Watch out for words such as “responsible party” and “joint and several liability.”** Contracts can have confusing terms that say, on one hand, that a third party is not personally responsible for paying the resident’s costs of care. But the contract could also say that if a person supporting a resident doesn’t ensure the resident’s Medicaid application is complete, accurate, and on time, they are responsible for paying the nursing home.

**Right to refuse to sign.** Anyone supporting a nursing home resident can refuse to sign an admissions contract that tries to hold them personally responsible for the resident’s bills. If the nursing home insists that the resident signs the contract, have a lawyer check the contract for violation of the NHRA.

### ***Private Pay, Medicare, & Medicaid***

Nursing homes often try to fill their beds with the highest-paying clients—private pay, private insurance, then Medicare, and finally Medicaid. When a Medicare Notice of Non-Coverage is issued, some facilities may mislead families by suggesting that Medicare has decided not to pay and that the resident must be discharged. At that point, Medicare has not made a determination about coverage. A resident cannot be evicted solely because Medicare will not pay.

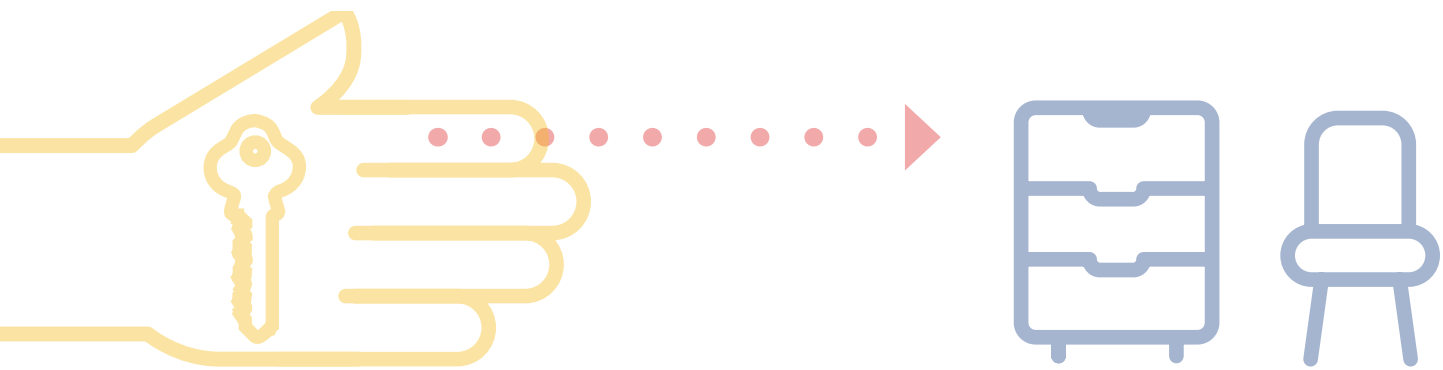




Medicare covers short-term stays under strict criteria, while Medicaid is for long-term custodial care. Dual-certified facilities (Medicare and Medicaid) should not push out residents based on payment sources if they accept Medicaid.

It is also inappropriate to ask residents to switch from Managed Medicare to Traditional Medicare in order to stay in the facility. It is the choice of the resident; facility staff members cannot force a resident to switch, and it may not be an option to do so.





## Room Transfer Rights

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Room transfers within a nursing home are covered under the NHRA and CGS Sec 19a-550(C), which mandates that residents must be notified and given a reason before any change in room or roommate assignment (unless it's an unforeseen emergency). Residents have the right to refuse a transfer unless it is necessary for their health or safety. This protects residents from unnecessary room changes. No move may occur if it is medically unsafe for the resident.

### RESIDENTS HAVE THE RIGHT TO:

- Receive written notice, including the reason for the change, before the resident's room or roommate in the facility is changed.
- Refuse to transfer to another room in the facility, if the purpose of the transfer is:
  - To relocate a resident of a skilled nursing facility (SNF) from the distinct part of the institution that is an SNF to a part of the institution that is not an SNF.
  - To relocate a resident of a nursing facility (NF) from the distinct part of the institution that is an NF to a distinct part of the institution that is an SNF.
  - Solely for the convenience of staff.

**A NURSING HOME CAN MOVE THE RESIDENT FROM ONE ROOM TO ANOTHER ROOM ONLY AT THE RESIDENT'S REQUEST OR FOR THE FOLLOWING REASONS:**

1. To accomplish physical facility repairs or renovations, or to protect residents from a facility emergency;
2. To resolve harmful, irreconcilable roommate incompatibility;
3. If there are two vacancies of the same sex in different rooms, no applicant of that sex pending admission, and grouping residents of the same sex is the only way for the facility to be able to admit someone of the opposite sex;
4. To allow use of specialized equipment no longer needed by the resident and needed by another resident;
5. If a resident can no longer benefit from a unit's specialized care focus;
6. From a private to a semi-private room if a resident's stay is Medicaid-covered;
7. To protect a resident from physical harm, to control the spread of an infectious disease, to respond to a facility or environmental emergency, or to protect a resident from immediate danger of death or serious physical harm.

Anytime the nursing home is transferring the resident, the transfer must occur with the least disruption and shall assess, monitor, and adjust care as needed. When a transfer is initiated by the nursing home and the resident does not consent to the transfer, the nursing home shall establish a consultative process that allows the resident to discuss concerns and alternatives with their clinical team and primary care provider.

### **THE CONSULTATIVE PROCESS MUST CONSIDER:**

- Cause for the transfer;
- Whether the cause can be removed;
- If not, whether the facility has attempted alternatives to transfer.

The resident must be informed of risks, benefits, and alternatives to transfer. Then, if the move still must occur, the resident must have 15 days' notice and be able to participate in deciding how the move occurs to minimize any potential harm. The nursing home must give the resident at least 30 days' notice prior to a move for renovations/repairs. While no advance notice is required in an emergency, the resident has the right to return to their room, if they wish, when the emergency is over.

### **WHILE THERE IS NO RIGHT TO A HEARING OR APPEAL OF A ROOM TRANSFER, THE WRITTEN NOTICE PROVIDED BY THE FACILITY MUST INCLUDE:**

- The reason for transfer
- Location of transfer
- Name, address, and phone number of the Regional Ombudsman

A resident's exercise of the right to refuse transfer does not affect the resident's eligibility or entitlement to Medicare or Medicaid benefits.



# Discharge Rights

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## *Medicare & Discharges*

Nursing homes often tell Medicare beneficiaries and their families that they intend to “discharge” a Medicare beneficiary because Medicare will not pay for the beneficiary’s stay. This misleads many people into incorrectly believing not only that Medicare has decided that it will not pay for the stay, but also that a facility can evict a resident if it concludes that Medicare is unlikely to pay.

### **HERE’S WHAT TO KNOW:**

- A nursing home’s statement that Medicare will not pay for a beneficiary’s stay is simply the facility’s determination; it is not Medicare’s decision. A Medicare beneficiary has the right to have Medicare make the coverage decision.
- A resident cannot be evicted solely because Medicare will not pay for the stay.
- A nursing home resident has the right to appeal.

Under Medicare rules, the resident has the right to appeal any denials, apply for Medicaid, or remain in the facility by paying privately. A Medicare discharge alone does not require the resident to leave the facility.

In addition to the resident’s rights regarding Medicare denials and insurance coverage, the resident also has specific rights if the facility plans to transfer or discharge them. These rights are outlined in the next section.

# Transfers And Discharges From The Facility To Another Setting

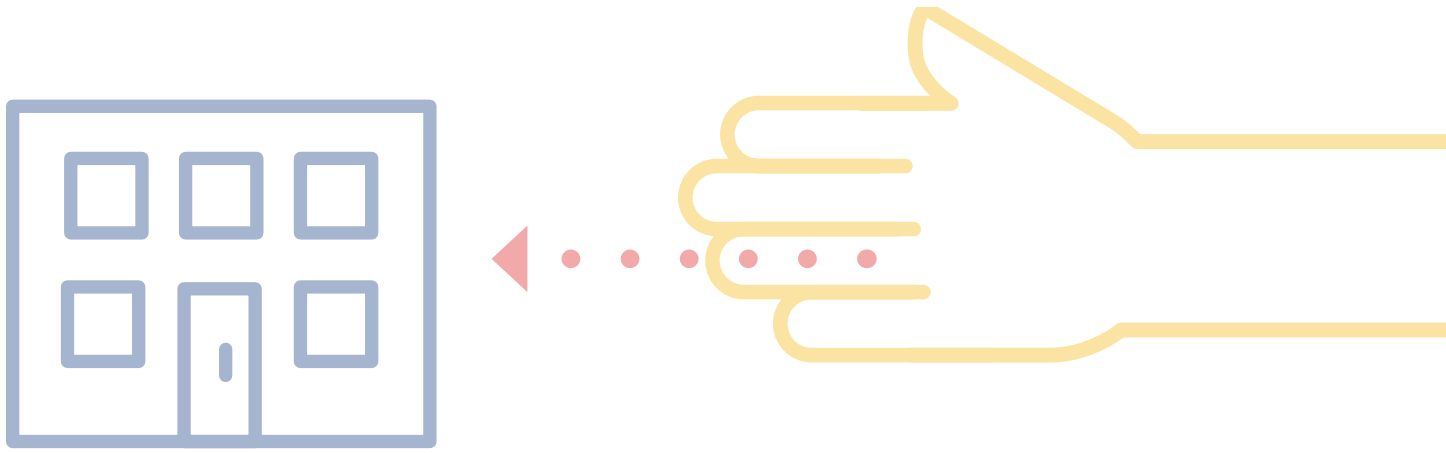
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## *Residents' Rights Regarding Transfers and Discharges*

State and federal regulations protect the rights of residents during transfers and discharges from the building.

### **THE FACILITY MUST PERMIT EACH RESIDENT TO REMAIN IN THE FACILITY, AND NOT TRANSFER OR DISCHARGE THE RESIDENT FROM THE FACILITY UNLESS:**

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- The health of individuals in the facility would otherwise be endangered;
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third-party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For



a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

- The facility ceases to operate.

## **Documentation and Communication**

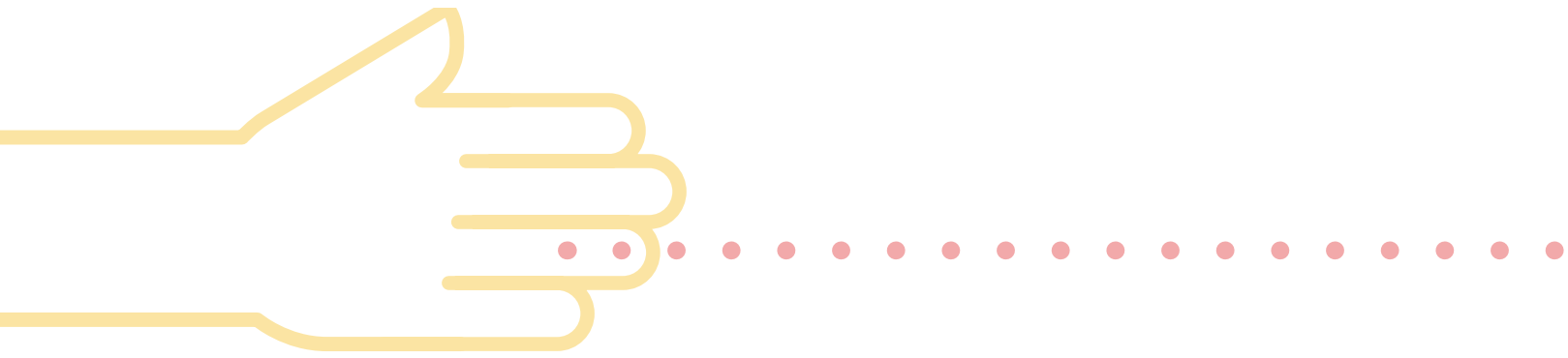
**IF A FACILITY PROCEEDS WITH A TRANSFER OR DISCHARGE UNDER THESE CIRCUMSTANCES, THE FOLLOWING REQUIREMENTS APPLY:**

- The transfer or discharge must be documented in the resident's medical record.
- Appropriate information must be communicated to the receiving health care institution or provider to ensure continuity of care.

## **Notice Before Transfer or Discharge**

**BEFORE TRANSFERRING OR DISCHARGING A RESIDENT, THE FACILITY MUST:**

- Provide written notice to the resident and their representative(s), explaining the transfer or discharge and the reasons for it.
- Deliver the notice in a language and manner that is understandable to the resident and their representative(s).
- Send a copy of the notice to a representative of the Office of the State Long Term Care Ombudsman.

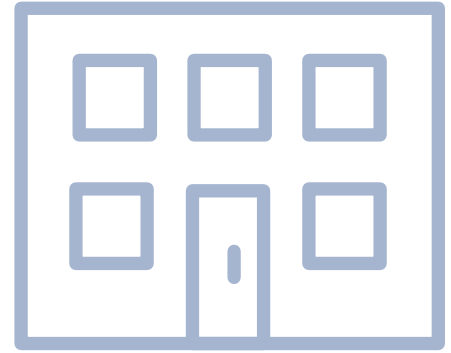


## Contents of the Notice

### THE WRITTEN NOTICE MUST INCLUDE THE FOLLOWING:

1. The reason for transfer or discharge;
2. The effective date of transfer or discharge;
3. The location to which the resident is transferred or discharged;
4. A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
5. The name, address (mailing and email), and telephone number of the Office of the State Long Term Care Ombudsman;
6. For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and





7. For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

In all cases, the facility must provide the resident with a safe and appropriate discharge plan.

## Timing of the Notice

Under normal circumstances, the facility must provide notice at least 30 days before the transfer or discharge. However, in certain situations, notice must be given as soon as practicable.

### THESE SITUATIONS INCLUDE:

- **Endangerment of Safety:** If the safety of individuals in the facility is at risk.
- **Health Risks:** If the health of individuals in the facility is endangered.
- **Improved Health:** If the resident's health improves enough to permit an earlier transfer or discharge.
- **Urgent Medical Needs:** If the resident requires an immediate transfer or discharge due to urgent medical needs.
- **Short-Term Residents:** If the resident has resided in the facility for less than 30 days.



### ***Notice of bed-hold policy and return***

**Notice before transfer.** Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies:

- The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;
- The reserve bed payment policy in the state plan, under § 447.40 of the Code of Federal Regulations, if any;
- The nursing facility's policies regarding bed-hold periods.

**Bed-hold notice upon transfer.** At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and the resident's representative written notice which specifies the duration of the bed-hold policy.

**Permitting residents to return to the facility.** A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave.

## THE POLICY MUST PROVIDE FOR THE FOLLOWING:

- A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semi-private room if the resident:
  - Requires the services provided by the facility; and
  - Is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.
- If the facility determines that a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility must comply with the requirements as specified in the Facility Notice Requirements section of this guide.
- **Readmission to a specific area of a nursing home.** When the facility to which a resident returns is considered what is known as a “composite distinct part” (as defined in § 483.5 of the Code of Federal Regulations), the resident must be permitted to return to an available bed in the particular location of the nursing home in which he or she resided previously. If a bed is not available in that location at the time of return, the resident must be given the option to return to that location upon the first availability of a bed there.

Visit [portal.ct.gov/ltcop/regulations](https://portal.ct.gov/ltcop/regulations) to read all information on regulations and statutes.



# Identifying Inappropriate or Discriminatory Practices

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**DISCRIMINATION CAN HAPPEN IN DIFFERENT WAYS. HERE IS A BRIEF LIST OF POSSIBLE TYPES OF DISCRIMINATION. IF THE NURSING HOME:**

- Refuses to accept an admission application from a Medicaid recipient or family member or refuses to place the applicant's name on a waiting list.
- Suggests that the Medicare beneficiary must sell his/her home and use the proceeds for nursing home care before getting Medicaid benefits.
- Informs the private paying family that when funds are used up, the resident will be transferred to a different room or nursing home for long-term care.
- Engages in questionable practices to try to collect on debts, including:
  - Attempting to evict the resident by pursuing a non-payment discharge without informing them of their rights to pursue Medicaid as a payment mechanism.
  - Applying for guardianship to gain control of a resident's assets without first assisting them to address financial questions related to payment options available including Medicaid.
  - Facilities that require third-party guarantees of payment and co-signers as a condition of admission to a nursing home.
  - Using a lawsuit as a tool to pressure family members who are not responsible for the debts to pay them.

## Have Questions or Need Help?

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HAVE CONCERNS THAT RIGHTS HAVE BEEN VIOLATED IN A NURSING HOME SETTING?

*Contact the Long Term Care Ombudsman Program.*

The statewide toll-free number

(866) 388-1888

(860) 424-5200



For additional  
resources,  
scan this  
QR code.

