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Know Your Rights When You Enter a Skilled Nursing Facility for Short-Term Rehabilitation (Coronavirus edition)

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Disclaimer

Please note: The following content is for informational purposes only. It is not to be interpreted as legal advice and the information contained is not necessarily applicable to your specific case.

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Agenda

Part 1: Hospital

- Rights as a hospital patient
- Hospital to nursing home for short-term rehabilitation
- COVID-19 considerations

Part 2: Nursing Home

- What to expect in the first 48 hours?
- Care planning and discharge planning
- Involuntary Discharge
- Jimmo: there is no improvement standard for Medicare coverage
- Resources

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Rights as a Hospital Patient

- You have the right to participate in your care!
  - From the moment you enter a hospital to the moment you leave, it is important to be involved in your care.
  - https://www.health.ny.gov/publications/1449.pdf
- You have the right to participate in your plan of discharge
  - Know your options for discharge:
    - Is the nursing home the only option? What are the risks to returning home?
  - You are part of a care team and are your own expert
    - You know your physical and financial limitations
    - You know the extent to which your loved ones can provide care.
  - Asking questions will likely improve your health outcomes and helps you become a better partner in your care.
  - If you feel you are having trouble being involved in your own care and planning, ask to speak with the hospital's patient advocate.

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Hospital to Nursing Home for Short-Term Rehabilitation

- Work with your discharge planner
  - Hospitals are required to provide you with information about local nursing homes and the discharge planner should be able to provide information.
- Do your own research:
  - Nursing Home Compare: https://www.medicare.gov/nursinghomecompare/search.html
  - NYS Health Profiles: https://profiles.health.ny.gov/nursing_home/county_or_region
  - Call the potential nursing homes, visit their websites
- Ensure your hospital records and any other records are sent to the nursing home. You also have the right to a copy and to review/make any corrections to your medical record.
  - This includes physician's orders (admission orders) for your immediate care
  - Medication list

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COVID-19 Considerations

- Executive Order 202.30
  - No hospital shall discharge a patient to a nursing home unless the nursing home operator or administrator has first certified that the receiving facility is able to properly care for such patient. Furthermore, no hospital shall discharge a patient to a nursing home without obtaining a negative test result.

- Communications:
  - Do you have a cellphone that you can bring with you in the facility?
  - Tablet with internet access?
  - Involvement of your community physician?
  - Is there a point person at the nursing home for communications?

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What to Expect in the Nursing Home: First 48 Hours

The nursing home is required to develop a Baseline Care Plan within your first 48 hours at the facility. (Unless they develop the Comprehensive Care Plan*)

- Staff are required to provide you with a written summary of this plan that will include:
  - Your initial goals of care, physician's orders, dietary orders, therapy services, and social services.
  - Remember: you decide your goals and objectives. Speak up!
- If you do not receive the written summary by 48 hours of entering the nursing home, ask for the baseline care plan summary!

https://elderjusticeny.org/wp-content/uploads/2019/02/Baseline-Care-Plan-To-Be-Uploaded.pdf

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Care Planning

Comprehensive Care Planning: The Person-Centered Care Plan

- Is the best tool to direct your care and must be developed within 21 days of your admission by a team that includes: you, your doctor or their representative, a registered nurse, a nurse aide, a food and nutrition staff member, any other professional your health needs require, and other individuals you request.
- The Plan must be individualized to your care needs and your goals. This includes goals for discharge!

https://nursinghome411.org/1167-2/

Care Plan Meeting: your family or others of your choice can participate even virtually!

- Tips: be an active participant!
  - Write down your questions and goals prior to the meeting
  - During the meeting be sure to establish your expected goals and outcomes
  - Ask questions
  - Request a copy of the care plan for your review
  - https://nursinghome411.org/forms-tools-resident-centered-advocacy/

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Resident Right: Discharge Planning

You have the right to return home or to any other living arrangement in the community. The nursing home has a legal obligation to help you and engage in discharge planning.

- A process that begins on admission and involves identifying your discharge goals and needs, developing and implementing interventions to address them, and continuously evaluating them throughout your stay to ensure a successful discharge.
- Your discharge plan is a part of your comprehensive care plan.
- Even if a safe discharge is not feasible in the near future, if your goal is to return home or another setting, your care plan should note those goals and the services you will receive in order to meet those goals.

https://elderjusticeny.org/wp-content/uploads/2019/05/Nursing-Home-Resident-Right-Returning-to-the-Community.pdf

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Legal Reasons for Discharge/Transfer

1. **Your health has improved**

   If you have completed your rehab and/or your health has improved so that you can safely return to the community or go to a lower level of care such as assisted living.

2. **You are endangering others**

   If the safety of individuals in the facility is endangered due to your clinical or behavioral status. This is in extreme cases.

3. The **health of individuals** in the facility would otherwise be endangered
4. You **haven't paid** for your nursing home stay after reasonable and appropriate notice
5. Your **needs cannot** be met

   If your health has worsened and the nursing home can no longer meet your needs, you can be sent to a higher level of care. This usually means the hospital or emergency room.

6. Nursing home **closure**

- **WHILE THESE ARE 'LEGAL' REASONS YOU STILL HAVE THE RIGHT TO APPEAL/CONTEST!!**

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Invalid Reasons for Transfer/Discharge

- **You need long-term care**

All nursing homes in NYS provide long-term care. There is no distinction between short-term and long-term. Even if you were admitted to receive short-term rehabilitation, you have the right to stay for long-term care.

- **Your Medicare coverage has ended**

Medicare will only cover a maximum of 100 days of nursing home care, but if your current coverage is ending, your nursing home has a responsibility to help you plan how to pay after it ends.

- **Your needs cannot be met in the nursing home**

Unless you are transferred to a higher level of care, like a hospital, this is rarely a legal reason.

- **You are in the hospital**

If you go to the hospital to receive acute medical treatment you have the right to return to the first available bed in your nursing home. You may also pay to hold the bed you left.

- **For any reason to an unsafe setting**

Nursing homes cannot discharge residents to a location where they would be unsafe.

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What to do if you are told you need to leave and/or receive a notice of discharge/transfer from the nursing home?

- If the nursing home has decided to ask you to leave, they are required to provide you with a discharge notice, that will explain the reason for discharge, the date of discharge, and discharge location.
- If you think the nursing home is asking you to leave for an improper reason, you have the right to appeal the discharge, and you have the right to remain in the nursing home pending the outcome of the appeal.
  - An appeal is filed by calling the NYS DOH: 1-888-201-4563
- Call the NYS Long Term Care Ombudsman Program to learn more about your rights.
- Call CELJ for potential legal representation
- Visit our website for our Nursing Home Transfer/Discharge Guide https://elderjusticeny.org/resources/long-term-care-resources/

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“Medicare won’t cover your SNF stay because you’re not improving” (AKA Jimmo)

Medicare Part A may cover up to 100 days of your nursing home stay if:

- You have the prerequisite hospital stay, your physician orders skilled nursing or therapy services, and skilled nursing or therapy services are required on a daily basis.

Problem:

- Medicare participants were being inappropriately denied Medicare coverage because they were not “improving.”
- Medicare participants as a result were not receiving skilled services they needed, and without those skilled services, Medicare will not pay.
- Nowhere in the federal regulations does It state there is an improvement standard.

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Jimmo Settlement: Clarification of Medicare Coverage Standards

Medicare will cover skilled therapy services when:

- An assessment of your clinical condition shows specialized judgment, knowledge, and skills of a qualified therapist are necessary for the performance of a safe and effective program
- This includes a maintenance program that is used to:
  - Maintain your current condition; or to prevent or slow further deterioration

Proper standard as clarified by the Jimmo settlement:

- Is a skilled professional needed to ensure care is safe and effective?
- Is a qualified nurse or therapist needed to provide or supervise the care?
- If yes to both, then Medicare shall* cover the services regardless whether the skilled care is to improve or maintain current levels, or slow deterioration.

*This assumes the other requisites to Medicare coverage are met.

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Recommendations for Responding

- Confirm: did Medicare deny the coverage? Or does the nursing home believe Medicare will deny the coverage?
  - You must be provided with a written notice that will include: the date coverage will end, the reason for termination, and a description of the right to appeal.
  - Appeal the denial: https://www.medicareadvocacy.org/wp-content/uploads/2018/09/Expedited-Appeals-Fact-Sheet.pdf
- Advocate for continued skilled services:
  - Develop a new plan of care with reasonable goals, ie maintaining functional level, walking to use the bathroom, using stairs in order to return home
  - Document the reason why a skilled person must provide or supervise the services
  - Even if the notice of termination of care is issued, it is important to get care re-started, and it can be re-started under a new plan of care! *
- Contact the Long-Term Care Ombudsman Program: 716-817-9222
- Contact CELJ for potential legal representation for the Medicare appeal

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Where to turn if there is a complaint?

File grievance with nursing home: request a written response

- https://elderjusticeny.org/wp-content/uploads/2019/02/Nursing-Home-Grievance-1.pdf

Long Term Care Ombudsman Program: https://ltcombudsman.ny.gov

- Nursing home resident advocacy program: inform, empower, advocate for the resident.
- 716-817-9222 (Cattaraugus, Chautauqua, Erie, Niagara)

Department of Health: https://www.health.ny.gov/facilities/nursing/complaints.htm

- Investigates complaints. Has the ability to issue citations and fines. 1-888-201-4563

Attorney General

- Investigates and prosecutes abuse and neglect of residents in nursing homes. 1-833-249-8499

https://elderjusticeny.org/wp-content/uploads/2019/02/Where-to-turn-when-you-have-a-nursing-home-concern.pdf

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Resources: Medicaid Home Care

Medicaid is the primary payer of long-term care services and supports. While there are private pay options for home care services, that is not always feasible. If you want to return to your community home, it is important to know your options:

- Medicaid 2020 General Letter
  - https://elderjusticeny.org/wp-content/uploads/2020/07/General-Medicaid-Letter-2020.pdf
- Medicaid FAQ
  - https://elderjusticeny.org/medicaid-eligibility-frequently-asked-questions/
- NYS Medicaid Managed Long-Term Care Guide
  - https://www.health.ny.gov/health_care/medicaid/redesign/docs/mltc_guide_e.pdf
- WNY Coalition Pooled Trusts
  - https://www.wnypooledtrust.org/

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Resources: Medicare Coverage

From the Center for Medicare Advocacy: https://medicareadvocacy.org/

- Nursing home (skilled nursing facility) coverage checklist
  - https://www.medicareadvocacy.org/wp-content/uploads/2018/08/Checklist.pdf
- Nursing home expedited appeals checklist
  - https://www.medicareadvocacy.org/wp-content/uploads/2018/09/Expedited-Appeals-Fact-Sheet.pdf
- Medicare home health coverage requirements checklist
  - https://www.medicareadvocacy.org/wp-content/uploads/2018/09/Home-Health-Jimmo-Checklist.pdf
- Medicare skilled nursing facility coverage toolkit
  - https://www.medicareadvocacy.org/wp-content/uploads/2018/01/Medicare%20SNF%20Coverage%20and%20Jimmo%20v.%20Sebelius%20Toolkit.pdf

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Resources: Long-Term Care Ombudsman Program

- An advocate and resource for people who reside in long-term care facilities:
  - Nursing homes, assisted living, adult care facilities.
  - This ***includes short-term nursing home stays for rehab!***
- Ombudsmen (resident advocate):
  - Help residents understand and exercise their rights to quality care and quality of life.
  - Advocate for residents by receiving, investigating, and working to resolve complaints made by or on behalf of residents.
  - With resident permission can participate in care plan meeting.
- Region 15 LTCOP: 716-817-9222 (Chautauqua, Cattaraugus, Erie, Niagara)
- State LTCOP: 1-855-582-6769; https://ltcombudsman.ny.gov/

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Resources

- Erie County Senior Services/NY Connects: 716-858-8526
  - https://www2.erie.gov/seniorservices/
  - https://www2.erie.gov/nyconnects/
- Nursing Home Resident Rights Information
  - https://nursinghome411.org/
  - https://elderjusticeny.org/resources/long-term-care-resources/
  - https://theconsumervoice.org/home
- WNY Independent Living Center
  - Open Doors Program: assists with the transition from nursing home back to home or residence of the person's choice.
  - Medicaid Application Assistance Program
  - http://wnyil.org/Services

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Free Legal Advice Helpline: Answers to Brief Legal Questions

- Monday through Friday from 9:00am to 11:00am EST at 1-844-481-0973. You can also call and leave a message outside of those hours, and e-mail us at any time at helpline@elderjusticeny.org. A licensed attorney will respond to you within 1 business day

Main Intake for Potential Representation: 716-853-3087

- Health Care Advocacy, Consumer, Elder Abuse Prevention, Kinship, and more!

COVID-19 Response: https://elderjusticeny.org/our-covid-19-response/

- Guide to federal and state guidance/directives issued to NYS Nursing Homes and Adult Care Facilities during COVID-19
- Informational videos on topics such as Medicaid, Nursing Home Discharges, POAs, and Remote Filing
- COVID-19: What New Yorkers Need to Know

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Thank You!

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