

# Involuntary Discharge or Transfer from a Nursing Home

*\*\*The following information applies only to Tennessee nursing homes. If you live in an assisted or independent living facility, the rules are different.\*\**

## What Is An Involuntary Discharge?

An involuntary discharge is when you want or need to stay in your current nursing home, but the nursing home thinks you should not stay there.

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## What Is An Involuntary Transfer?

An involuntary transfer can be a transfer to another nursing home, or it could be a transfer to a different wing of the current nursing home. For example, if the nursing home thinks you need to move to the memory care wing, but you disagree, this would be an involuntary transfer.

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## When Can I Be Involuntarily Discharged Or Transferred From A Nursing Home?

You can only be involuntarily discharged or transferred if:

1. Your doctor orders it in writing. The doctor must show in writing that:
  1. The doctor has examined you within 7 days before the transfer or discharge,
  2. The doctor knows the plans for your discharge and care, AND
  3. The transfer or discharge will not hurt your health or safety.
2. You make the nursing home unsafe for other people. \*
3. Your needs are too high for the nursing home. \*

4. You get better. \*
5. You have not paid your nursing home bill, the nursing home told you that you have not paid, and the nursing home gave you time to pay.
  1. You cannot be discharged for not paying if you have sent in an application for Medicaid/TennCare, and you are waiting on a decision.
  2. If your Medicaid/TennCare application is denied, you can apply for an undue hardship waiver. You cannot be discharged for at least 10 days while waiting on a decision about whether a discharge would be an undue hardship on you. An undue hardship means your health or life would be endangered or you would be in danger of loss of food, clothing, shelter, or other necessities of life if you were discharged.
6. The nursing home closes. a. If this happens, there is a team of people that will make sure you have a choice of where you would like to go. b. The team includes the Long-Term Care Ombudsman, TennCare, the Tennessee Department of Health, and your Managed Care Organization (MCO).
7. The nursing home reduces its licensed bed capacity by more than 10 percent. However, residents are not discharged for this reason in Tennessee currently.

\* These reasons require the medical director's approval. Nursing homes can involuntarily discharge or transfer residents for any reason in unique situations. However, reasons other than those listed are very rare.

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## **Does The Nursing Home Have To Tell Me They Plan To Discharge Or Transfer Me?**

Yes. If a nursing home wants to discharge or transfer you, they must give you (and, if known, a family member or legal representative) written notice at least 30 days in advance.

There is an exception in emergency situations when a resident must be transferred or discharged for a psychiatric or other emergency. No transfer or discharge can happen until 5 business days after the nursing home tells the Department of Health and the Area Long-Term Care Ombudsman. But if a doctor says it's needed, the transfer or discharge can happen immediately.

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# **What Should The Notice Of Discharge Or Transfer Have In It?**

The notice must include:

1. The name, mailing address, and telephone number of the State Long-Term Care Ombudsman.
2. Information about how to appeal, including contact information for the person who you appeal to. This person is currently Lindsey Huber from the Bureau of TennCare's Department of Finance and Administration.
3. The mailing address and telephone number of the Tennessee Department of Intellectual and Developmental Disabilities, if you have a developmental disability.
4. The mailing address and telephone number of the TennCare Advocacy Program, if you have a mental illness.

The form for involuntary discharge or transfer can be found here:

<https://www.tn.gov/content/dam/tn/aging/documents/NFDischargeTransferNotice.pdf>

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## **What Are My Rights If The Nursing Home Threatens To Discharge Me?**

You must be given a written notice of the discharge or transfer at least 30 days in advance. You are also entitled to a hearing with the Bureau of TennCare if you want to fight the decision. If the Bureau of TennCare agrees with the decision and you want to appeal again, you can appeal to a court in the county where the nursing home is located.

Be sure to contact the Ombudsman or TennCare before the date of discharge listed on your notice! After this date, you lose the right to fight the decision!

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## **What Do I Need To Know About The TennCare Hearing?**

You can only get a hearing if the nursing home is in the Medicaid/TennCare program. If the nursing home only accepts private pay, there is no right to a hearing. The hearing must happen within 90 days from the date you appeal. During the time before the hearing, the nursing home must let you to stay.

The hearing is in front of an administrative judge who considers evidence of whether you should or should not be discharged or transferred.

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## **What Are Some Defenses To Involuntary Discharge Or Transfer?**

Some common defenses to involuntary discharge or transfer include:

1. Discrimination by the nursing home because payment is coming from Medicaid;
  2. The nursing home has not given you a discharge plan;
  3. The nursing home has not given you enough notice;
  4. The place of proposed transfer or discharge would not give you appropriate care for your medical issues, or
  5. The discharge would put you in a dangerous situation. For example, if you would be homeless outside of the nursing home, you would be unsafe. If you won't be safe outside of the nursing facility, you must be allowed to stay past your discharge date.
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## **What If I Have A Medical Emergency That Puts Me In The Hospital And The Nursing Home Wants To Discharge Me While I Am Away?**

The nursing home must hold your bed open for 10 days, with a limited exception for “vent units” because they are in such high demand. After those 10 days, the nursing home must let you come back as soon as a new bed is available.

You can only have a 10-day bed hold once a year if you are receiving Medicaid/TennCare, so you can't have two 10 day holds in a single year. Tennessee nursing homes cannot legally “dump” you due to a medical emergency. However, if

you pay for the nursing home through private pay, you must continue to pay during this period.

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## **Who Can I Ask For Help If I Am Worried I May Be Discharged Or Transferred?**

Call the Long-Term Care Ombudsman.

### **State Long-Term Care Ombudsman**

Lauren Meeker  
(877) 236-0013  
(615) 837-5112

### **Southwest Tennessee Ombudsman**

Norma Bell  
Southwest AAAD  
(731) 668-6411

### **Northwest Tennessee Ombudsman**

Kim Boyd  
West Tennessee Legal Services (Huntingdon Office)  
(731) 694-1835

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## **If I Believe My Rights Have Been Violated By An Involuntary Transfer Or Discharge, Can I Sue?**

Maybe. There are a number of legal remedies that you can seek through federal, state, administrative, and common law actions. You should talk to an attorney to see which of these is right for you. You can also call your region's long-term care ombudsman for help.

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