

When Can a Nursing Home Legally Discharge a Resident?

Services

Healthcare & Nursing
Home Law

Related Attorneys

Thomas J. Cleary

By Thomas J. Cleary on August 31, 2026

Moving a loved one into a nursing home is a major life transition, and one that hopefully promises a caring and stable environment. Hearing that a facility plans to transfer or discharge a resident against their wishes can be incredibly distressing.

Nursing home residents have strict legal protections, but facilities do have the right to discharge individuals under specific circumstances. Speaking with a [Massachusetts nursing home attorney](#) may help clarify whether your loved one is being discharged legally.

What is the Nursing Home Reform Act of 1987?

Residents deserve high-quality care and the ability to maintain their individual rights. They also deserve a sense of permanency and stability. The [Nursing Home Reform Act of 1987](#), passed as part of the Omnibus Budget Reconciliation Act of 1987, establishes many of these protections. Compliance is overseen by the [Centers for Medicare & Medicaid Services \(CMS\)](#), generally through state survey agencies.

Under the Act, your loved one cannot be transferred or discharged simply because the facility considers them difficult, finds their care burdensome or costly, or would prefer a more profitable resident. Federal law permits an involuntary transfer or discharge only for specific reasons, such as when the resident's needs genuinely cannot be met by the facility, their health has improved enough that they no longer require its services, their conduct endangers the safety of others, or they have failed to pay after proper notice. When a facility does act, it must document the specific reason in the resident's medical record, provide advance written notice (usually at least 30 days), and inform the resident of the right to appeal.

Voluntary vs. Involuntary Discharge

If the family or resident feels it is time to leave the facility, this is known as a voluntary discharge. Sometimes, you may pursue a voluntary discharge because the resident has recovered and no longer needs to receive skilled or rehabilitative nursing care. Or, you may determine that a facility that is closer to family, provides a higher level of care, or is more appropriate. Regardless, a voluntary discharge is initiated by the resident.

Individuals deserve autonomy over their situation to the greatest extent possible, but sometimes factors render this impossible. When a facility completes a discharge against the resident's wishes, this is known as an involuntary discharge. Massachusetts law considers that involuntary discharge can be disruptive to the resident's continuing care and, therefore, only allows it under one of six specific legal reasons.

The 6 Legal Reasons a Nursing Home Can Discharge a Resident

A facility cannot legally discharge a resident unless it can prove that [one of the following six federal criteria](#) is met:

The Facility Cannot Meet the Resident's Needs

If a resident's health or condition is deteriorating to a degree that the facility can no longer care for them, or ensure a safe environment, a nursing home may initiate a discharge. The facility must document exactly what needs they cannot meet and what attempts were made to adapt. This may occur if a resident needs to move from an assisted living home to a skilled nursing facility. Similarly, if a nursing home resident's medical needs advance to a point of requiring specialized services that a nursing home isn't equipped to provide, such as continuous ventilator care, this could result in a transfer to a facility that can meet those needs.

The Resident No Longer Needs Nursing Home Care

If a resident's health improves significantly through rehabilitation or treatment, they may no longer require the high level of care they are currently receiving. For example, a skilled nursing home may legally transition a recovered resident to a lower level of care, such as assisted living or home care.

The Resident Poses a Safety Risk to Others

If a resident poses a safety risk to others in the building, the facility may initiate discharge proceedings. Before legally completing an involuntary discharge, the facility must first demonstrate genuine reasonable efforts to manage the behaviors through clinical interventions, such as mental health support.

The Resident Poses a Health Risk to Others

In the event that your loved one has a severe, unmanageable communicable disease, the facility may determine they are unable to continue providing care at the risk of the rest of their community.

Non-Payment After Proper Written Notice

Finances are often a point of difficulty for nursing home residents and their families. If a resident has failed to pay (or failed to have paid under Medicare/Medicaid) for their stay, the facility can initiate a discharge on the basis of nonpayment. If you believe there has been a billing issue, reach out to the facility before assuming that discharge is inevitable.

As a resident or loved one, you are protected from the facility filing discharge before they make a reasonable attempt to provide notice of late or missed payment. Additionally, they cannot legally complete an involuntary discharge simply because they are transitioning from private pay to [MassHealth \(Medicaid\)](#), provided the facility accepts Medicaid.

The Facility Is Closing

If your nursing facility ceases to operate, they are understandably unable to continue services. We know that this can be incredibly stressful, but the law requires the facility to help you and your loved one find other comparable and safe alternatives.

The Required Discharge Notice and What It Must Include

You have a right to notice before most discharges, with the exception of rare emergency situations where the health or safety of individuals in the facility is otherwise in danger.

Typically, the nursing home must provide at least 30 days written notice prior to the transfer or discharge. The notice must be detailed and include:

1. The specific reason for the transfer or discharge;
2. The date of the move;
3. The specific location to which the resident is being moved;
4. The address and telephone number of the Massachusetts [long-term care ombudsman](#); and
5. Information on how the resident can appeal the decision.

The facility must also provide sufficient preparedness and orientation to residents before the move, ensuring a safe, orderly, and trauma-free transition. Examine the notice provided, as any missing or incomplete information may affect whether the discharge was considered lawful.

When a Nursing Home Discharge Is Unlawful

A discharge is considered unlawful if the facility fails to follow federal and state notice timelines, fails to offer viable discharge locations, or discriminates. One common example of illegal discharge includes “hospital dumping,” where a resident is sent to the hospital for evaluation and then refused readmittance when they are cleared to return.

Can You Sue a Nursing Home for Wrongful Discharge?

Illegal discharge can be stressful and dangerous if you are unable to quickly find comparable accommodations. If you or a loved one was illegally discharged from a nursing home, it may constitute [elder abuse](#), breach of contract, or a violation of federal and state consumer protection laws. Families can file an emergency appeal with the state to halt the discharge. Civil litigation may also be pursued if the family wishes to sue for damages if the illegal discharge resulted in physical regression, emotional trauma, or increased medical expenses.

Facing a Wrongful Discharge? Our Massachusetts Nursing Home Attorneys Can Help.

If your loved one is facing an involuntary discharge, you must act quickly to file an appeal and demand an administrative hearing. At Cohen Cleary, P.C., our experienced elder law and nursing home litigation attorneys understand how to hold facilities accountable under the Nursing Home Reform Act. Contact Cohen Cleary, P.C. today to [set up a consultation](#) and protect your family member’s rights.