

Managing and Resolving Minefields Inherent in Involuntary Discharges of Residents from Skilled Nursing Facilities

MINTON P. MAYER
Minton.Mayer@qpwblaw.com

COLLEEN SCHUETZ FREEMAN
Colleen.Schuetz@qpwblaw.com

Quintairos, Prieto, Wood & Boyer, P.A.
Nashville 615-248-3605
Memphis 901-312-1640





Involuntary Discharge

Avoiding Involuntary Discharge



What Does Not Qualify for Involuntary Discharge

- Medicaid is resident's payor source
- You don't like the resident or resident's family
- Medical needs that facility can care for
- The resident missed a payment, but you did not provide them with notice of the missed payment



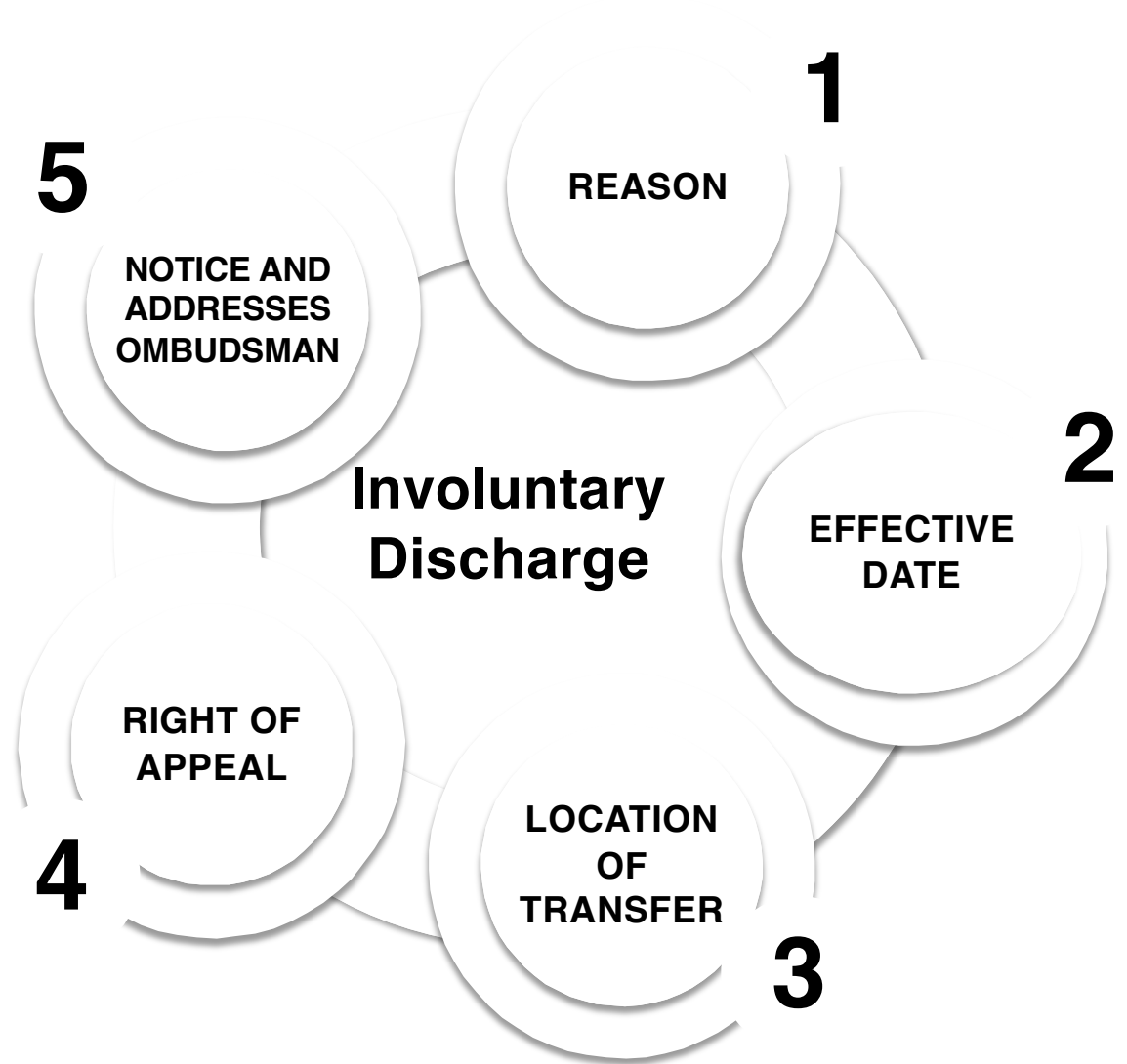
Strategies to Avoid Difficult Involuntary Discharges

- Be picky
- Make involuntary discharge a last resort
- Keep a record & give notice
- Document concerns
 - Resident's welfare
 - Employees'/other residents' health and safety



Handling Involuntary Discharge

Notice of Involuntary Transfer and Discharge Must Include



Tenn. Comp. R. & Regs. 1200-13-01-.06

A nursing facility cannot transfer or discharge the resident from the facility unless:

- 1) the resident's welfare cannot be met at the facility
- 2) the resident's health has improved and no longer needs services
- 3) the safety of individuals in the facility is endangered
- 4) the health of individuals in the facility would otherwise be endangered
- 5) the resident failed to pay after reasonable and appropriate notice
- 6) the facility closes

Regulatory Framework



Compliance with the Regulations

- Written order
- Timely notification of next of kin/authorized representative
- Document basis for discharge in resident's clinical record
- Orientation to the discharge

Notice Requirements



Nursing Home Notice of Involuntary Transfer or Discharge

To the Nursing Home: This notice is for an involuntary discharge or transfer. Fill out this notice for the resident you want to move. Give these pages to the resident – **and** to his or her representative. Also, send these pages to the TennCare Commissioner's Designee, State LTC Ombudsman, and the District LTC Ombudsman. The federal rules at 42 C.F.R. § 483.15 give more information.

Resident Name _____ Medicaid ID (if applicable) _____ Resident Representative (if applicable) Name _____ Address _____ Phone _____ Place where resident is going (required) Name _____ Address _____ Phone _____
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Current Nursing Home (and Contact Person) Nursing Home _____ Address _____ Contact Person Name _____ Contact Person Phone _____
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Date Nursing Home Provided Notice and the Proposed Move Nursing home gave the resident these pages on: _____ Nursing home wants to move resident on: _____ A nursing home can move a resident 30 days after it gives this page to the resident, unless an appeal is pending. The nursing home can move a resident before then if an exception applies. But the nursing home must document the exception. The resident can choose to move before the 30 days is up. This is up to the resident.

Reason for discharge or transfer:

- You did not pay your bill from the nursing home. The nursing home already told you this. And the nursing home gave you time to pay.
- The nursing home is closing.
- The nursing home says it cannot care for you. Your needs are too high.*
- You got better. And you do not need care in a nursing home now.*
- You make the nursing home unsafe for other people.*
- You may endanger the health of other people in the nursing home.*

* A doctor must agree if the nursing home checks this box. The doctor must also sign the second page. Or the nursing home must attach the doctor's written order. This could be your doctor – or the doctor at the nursing home. Or it could be a nurse practitioner or physician assistant who works for one of these doctors.

The nursing home must tell you why they want you to move. Here is what they said:

You Can Get Help

You can appeal this. The State will have a hearing for your case. Also, you can get help with your appeal. See below. If you ask, the nursing home **must** help you with this. Talk to the Nursing Home Contact Person on the first page. And the nursing home **must** help you call the people below.

You Can Appeal
You can appeal if you don't agree with the nursing home. If you appeal within 30 days, the nursing home usually cannot make you move until you get a decision. The 30 days starts on the day you got this page. But, if you do not appeal within 30 days, you must move by the proposed date on the first page.

How to Appeal
If you want to appeal, call **1-833-582-1224**. This is a free call. Or fax your appeal to 615-734-5317. Or email cd.appeals.tennCare@tn.gov. Or write to TennCare's Office of General Counsel, ATTN: Involuntary NF Discharge Appeals, 310 Great Circle Road, Nashville, TN 37243. Make sure to send a copy of these pages.

Long-Term Care Ombudsman
You can ask a resident advocate to help you. This person is the Long-Term Care Ombudsman and their services are free and confidential. They can explain this page to you. They can also help you appeal. Call **1-877-236-0013**. This is a free call. Or write to them at 502 Deaderick Street, Andrew Jackson Building, 9th Floor, Nashville, TN 37243-0860. Information about discharges is available at <https://www.tn.gov/aging/our-programs/long-term-care-ombudsman.html>.

Disability Rights Tennessee
Do you have a mental illness? Do you have an intellectual or developmental disability? And do you need help with the nursing home? Disability Rights Tennessee can help. Call **1-800-342-1660**. This is a free call. Or email GetHelp@disabilityrightstn.org. Or write to them at 2 International Plaza, Suite 825, Nashville, TN 37217. Or fax to 615-298-2046.

Other Help You Can Get:

Department of Intellectual and Developmental Disabilities
Call **1-800-535-9725**. This is a free call. Or email Carmelita.9.Hillsman@tn.gov. Or write to them at 315 Deaderick Street, UBS Tower, 8th Floor, Nashville, TN 37243.

TennCare Advocacy Program
Call **1-800-758-1638**. This is a free call. Or email TennCareAdvocacy@tnca.com. Or write to them at 310 Great Circle Road, Nashville, TN 37243.

I gave these completed pages to the resident:

Nursing Home Administrator/Designee Name _____ Signature _____ Date _____

Physician/Designee Name (When Required) _____ Signature _____ Date _____

I received these pages:

Resident or Representative Name _____ Signature _____ Date _____

Notice given to:

Resident _____ (Date)
Resident's Representative _____ (Date)
Resident Clinical Record _____ (Date)
District LTC Ombudsman _____ (Date)
State LTC Ombudsman _____ (Date)
TennCare Commissioner's Designee _____ (Date)
Health Facilities Commission _____ (Date)

To the Nursing Home: Send these pages to the TennCare Commissioner's Designee, the state and district LTC Ombudsman, and the Health Facilities Commission at:

TennCare's Commissioner's Designee at Large

ATTN: Involuntary Discharge Appeals- NF
310 Great Circle Road- 3W
Nashville, TN 37243
P: 833-582-1224
Fax: 615-734-5317
Email: gd.appeals.tennCare@tn.gov

State Long-Term Care Ombudsman

Tennessee Commission on Aging and Disability
ATTN: Teresa Teeple
502 Deaderick Street, 9th Floor
Nashville, TN 37243-0860
P: 615-253-5412
Fax: 615-741-3309
Email: ombudsman.notification@tn.gov
Contact information for each District LTC Ombudsman is at
<https://www.tn.gov/aging/our-programs/long-term-care-ombudsman/district-long-term-care-ombudsman.html>

Health Facilities Commission

665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
P: (615) 741-7532
Email: caroline.tippens@tn.gov

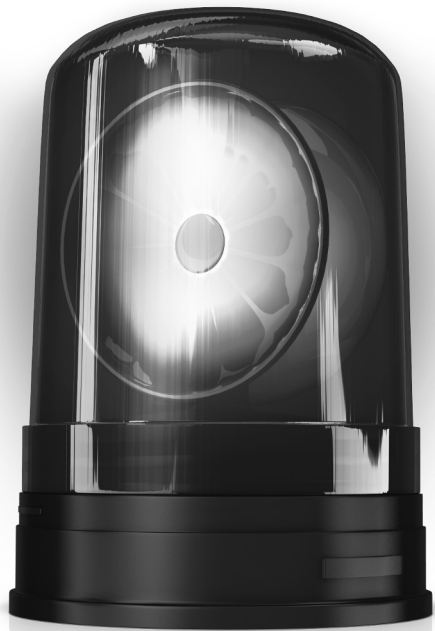
Appealing Involuntary Discharge



Involuntary Discharge Appeal Hearing

- What to expect
- Testimony & proof needed at hearings
- Common arguments
- Common defenses





Emergency Discharge

- 30-day notice requirement is not necessary if:
 - The safety and/or the health of individuals in the facility are endangered
 - Urgent medical needs of the resident
- In these situations, notice of discharge must be given as many days before discharge as is practicable
- Residents sent emergently to an acute care setting **MUST** be permitted to return to the facility

Declaring 6404 Status





- Complete Part 1 for EMERGENCY DETENTION for immediate examination for emergency admission
- Complete Part 2 for the 1st Certificate of Need for EMERGENCY INVOLUNTARY ADMISSION
- Complete Part 3 for the 2nd Certificate of Need for EMERGENCY INVOLUNTARY ADMISSION

EMERGENCY DETENTION FOR IMMEDIATE EXAMINATION FOR EMERGENCY ADMISSION

I am a (check one):

- Law enforcement officer authorized to make arrest in Tennessee
- Licensed physician
- Licensed psychologist with health service provider designation
- Qualified Mental Health Professional (QMHP), as identified in Tenn. Code Ann. § 33-1-101 and found on page 2, section A of this form, designated by the TDMHSAS Commissioner as a mandatory pre-screening agent

Pursuant to Tenn. Code Ann. § 33-6-401, _____, referred to below as "person", shall be detained under Tenn. Code Ann. § 33-6-402 for immediate examination under Tenn. Code Ann. § 33-6-404 to determine whether the person is subject to admission to a hospital or treatment resource under Tenn. Code Ann. § 33-6-403 for emergency diagnosis, evaluation, and treatment under Title 33, Chapter 6, Part 4, Tenn. Code Ann.

I have reason to believe that the person identified above has a mental illness or serious emotional disturbance, AND the person poses an immediate substantial likelihood of serious harm under Tenn. Code Ann. § 33-6-501 because of the mental illness or serious emotional disturbance, as evidenced by the following behavior by the person which I have observed or have reason to believe is true: (Specifically, include behavior which shows threats or attempts at homicide, suicide, other bodily harm, or behavior placing others in reasonable fear of violent behavior, or which shows that the person is unable to avoid severe impairment or injury from specific risks.)

[Empty box for describing behavior]

Date: _____ Signature: _____
Time: _____ Printed Name: _____

Disposition (i.e. released, transferred, transported to CSU, admitted, etc.):

[Empty box for disposition]

Date: _____ Signature: _____
Time: _____ Printed Name: _____

Check Here to RESCIND
(requires a new examination)

Date: _____ Time: _____

SIGNATURE OF EXAMINING PROFESSIONAL _____

FIRST CERTIFICATE OF NEED FOR EMERGENCY INVOLUNTARY ADMISSION UNDER TITLE 33, CHAPTER 6, PART 4, TENNESSEE CODE ANNOTATED

_____, of the County of _____
PRINT NAME OF EXAMINING PROFESSIONAL
State of Tennessee, certify that I personally examined _____
PRINT NAME OF PERSON EXAMINED
on _____ at _____
DATE YEAR TIME AM PM

A Check all that apply:

- I am not a Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) Commissioner-designated mandatory pre-screening agent and, I am a (check one):
- Licensed physician Licensed psychologist designated as a health service provider

Please Complete the Following:

- I have completed this certificate because a mandatory pre-screening agent was not available within 2 hours
- AND**
- I have consulted with the mental health crisis team in my area and have determined that all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person as indicated in Section B, # 4 below.

I spoke with _____
STAFF NAME TITLE / AGENCY
OR

- I am a Qualified Mental Health Professional (QMHP) who has been designated by the TDMHSAS Commissioner as a mandatory pre-screening agent.*
- *QMHP means a person who is licensed in the state, if required for the profession, and who is a psychiatrist; physician with expertise in; psychologist with health service provider designation; psychological examiner; licensed master's social worker with two (2) years of mental health experience or licensed clinical social worker; marital and family therapist; nurse with a master's degree in nursing who functions as a psychiatric nurse; licensed professional counselor; or if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children. *A TDMHSAS Commissioner-designated mandatory pre-screening agent must have mental health experience with children in order to complete a certificate of need on a child.

B In my professional opinion, based on the examination and the information provided, I certify that this person is subject to involuntary care and treatment under Title 33, Chapter 6, Part 4, Tennessee Code Annotated because, as shown by the following facts and reasoning, the person:

1. has a mental illness or serious emotional disturbance as defined in Tenn. Code Ann. § 33-1-101(16) and (20), (list known mental illness or serious emotional disturbance history and current signs/symptoms):
Mental illness is a psychiatric disorder, alcohol dependence or drug dependence; does not include intellectual and/or developmental disabilities. **Serious emotional disturbance** is a condition in a child who at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria, that results in functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology.

[Empty box for facts and reasoning]

SECOND CERTIFICATE OF NEED FOR EMERGENCY INVOLUNTARY ADMISSION PART 3

Name of person examined: _____ Date: _____

A I am a licensed physician. [ONLY for completing second certificate at the time of admission.]

B In my professional opinion, based on the examination and the information provided, I certify that this person is subject to involuntary care and treatment under Title 33, Chapter 6, Part 4, Tennessee Code Annotated because, as shown by the following facts and reasoning, the person:

- has a mental illness or serious emotional disturbance as defined in Tenn. Code Ann. § 33-1-101(16) and (20), (list known mental illness or serious emotional disturbance history and current signs/symptoms):
Mental illness is a psychiatric disorder, alcohol dependence or drug dependence, does not include intellectual and/or developmental disabilities. *Serious emotional disturbance* is a condition in a child who at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria, that results in functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology.

- AND**, poses an immediate substantial likelihood of serious harm under Tenn. Code Ann. § 33-6-501 because of the mental illness or serious emotional disturbance (detail specific behavior substantiating this requirement):
 - has threatened or attempted suicide or to inflict serious bodily harm on such person, or
 - has threatened or attempted homicide or other violent behavior, or
 - has placed others in reasonable fear of violent behavior and serious physical harm to them, or
 - is unable to avoid severe impairment or injury from specific risks, **AND**
 - there is a substantial likelihood that such harm will occur unless the person is placed under involuntary treatment.

A person "poses an immediate substantial likelihood of serious harm" IF AND ONLY IF the person:

- AND**, needs care, training, or treatment because of the mental illness or serious emotional disturbance (describe what makes care, training or treatment necessary):
- AND**, all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person (list alternatives considered and rationale for rejection of all alternatives):

C WITH MY SIGNATURE:

- I conclude that this person is subject to admission to a hospital or treatment resource under Title 33, Chapter 6, Part 4, Tennessee Code Annotated. The information is accurate and based upon my (check one):
 - FACE-TO-FACE** examination of the individual
 - TELEHEALTH** examination of the individual
- I understand that completion of this certificate of need initiates a process, which may result in deprivation of an individual's liberty for the purposes of care, training, or treatment. I understand that to willfully provide inaccurate information on this certificate of need constitutes a crime.

PRINT NAME OF EXAMINING PROFESSIONAL _____ SIGNATURE OF EXAMINING PROFESSIONAL _____
 DATE _____ TIME _____ PHONE NUMBER _____

FIRST CERTIFICATE OF NEED - PART 2 CONTINUED

Name of person examined: _____ Date: _____

- B**
- AND**, poses an immediate substantial likelihood of serious harm under Tenn. Code Ann. § 33-6-501 because of the mental illness or serious emotional disturbance (detail specific behavior substantiating this requirement):
 A person "poses an immediate substantial likelihood of serious harm" IF AND ONLY IF the person:
 - has threatened or attempted suicide or to inflict serious bodily harm on such person, or
 - has threatened or attempted homicide or other violent behavior, or
 - has placed others in reasonable fear of violent behavior and serious physical harm to them, or
 - is unable to avoid severe impairment or injury from specific risks, **AND**
 - there is a substantial likelihood that such harm will occur unless the person is placed under involuntary treatment.

- AND**, needs care, training, or treatment because of the mental illness or serious emotional disturbance (describe what makes care, training, or treatment necessary):

- AND**, all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person (list alternatives considered and rationale for rejection of all alternatives):

C Having certified that this person is subject to involuntary care and treatment under Title 33, Chapter 6, Part 4, Tennessee Code Annotated, I further certify that this patient:

- May be transported to a TDMHSAS designated telehealth location for a second certificate of need (CON) examination;
- OR**
- Requires direct transportation to an admitting psychiatric facility for a second certificate of need (CON) examination;
- AND**
- (1) May be transported to an admitting psychiatric facility or TDMHSAS designated telehealth location for second CON examination pursuant to Tenn. Code Ann. § 33-6-901 by an available friend, neighbor, mental health professional familiar with the individual, relative, or a member of the clergy because the patient does not require physical restraint or vehicle security **AND** does not pose a reasonable risk of danger to the patient's self or others for purposes of transport;
- OR**
- (2) May be transported to an admitting psychiatric facility or TDMHSAS designated telehealth location for second CON examination by ambulance or secondary transportation agent designated by the sheriff because the patient does not require physical restraint or vehicle security for purposes of transport;
- OR**
- (3) Must be transported to an admitting facility or TDMHSAS designated telehealth location for second CON evaluation by sheriff/law enforcement because the patient poses a reasonable risk of danger to the patient's self or others **AND** requires physical restraint and vehicle security for purposes of transport; or transport options (1) and (2) above are unavailable.

D WITH MY SIGNATURE:

- I conclude that this person is subject to admission to a hospital or treatment resource under Title 33, Chapter 6, Part 4, Tennessee Code Annotated. The information is accurate and based upon my (check one):
 - FACE-TO-FACE** examination of the individual
 - TELEHEALTH** examination of the individual
- I understand that completion of this certificate of need initiates a process, which may result in deprivation of an individual's liberty for the purposes of care, training, or treatment. I understand that to willfully provide inaccurate information on this certificate of need constitutes a crime.

PRINT NAME OF EXAMINING PROFESSIONAL _____ SIGNATURE OF EXAMINING PROFESSIONAL _____
 DATE _____ TIME _____ PHONE NUMBER _____

**Addressing
Liability
Issues While
an Appeal is
Pending**





Hypotheticals

Questions



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