



## Defending Evictions from Florida Nursing Facilities

**Eviction<sup>1</sup> is permitted only if one or more of these six reasons occurs: <sup>2</sup>**

1. The resident's needs cannot be met in the facility;
2. The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
3. The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
4. The health of individuals in the facility is endangered by the resident's presence;
5. The resident has failed to pay to stay at the facility, despite reasonable and appropriate notice; or
6. The facility ceases to operate.

### PRACTICE TIPS

- If the reason for the eviction is medical, the discharge notice must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.<sup>3</sup>
- Facilities may not use a Notice of Medicare Non-Coverage (NOMNC) as a discharge notice since the NOMNC requirements are separate and unrelated to those for eviction.<sup>4</sup>
- The resident cannot be discharged for failure to pay while the resident's Medicaid eligibility is being determined.<sup>5</sup>
- Consider raising the facility's obligation to (1) inform the resident of the right to apply for Medicaid and (2) ensure the resident has the necessary assistance to apply as a defense for non-payment.<sup>6</sup>
- The nursing facility may not charge an amount above the patient liability as determined by DCF.<sup>7</sup>
- A facility initiates a discharge if it does not allow a resident to return to the facility after hospitalization or therapeutic leave and must comply with the legally-mandated discharge requirements.<sup>8</sup>

**A nursing facility's written notice of a proposed eviction must:**

- Be given to (1) the resident, (2) the resident's representative(s), and (3) Florida's Long-Term Care Ombudsman program ("Ombudsman").<sup>9</sup>
- Be provided at least 30 days before the proposed eviction, or "as soon as practicable" when it is related to the welfare/needs of the resident, the health or safety of others at the facility would be endangered, or a resident has not resided in the facility for 30 days.<sup>10</sup>
- State the (1) legal grounds for the proposed eviction, (2) proposed effective date, (3)

specific location to which the resident is to be evicted, (4) resident's appeal rights, (5) procedures to file an appeal, and (6) contact information for the Ombudsman.<sup>11</sup>

- Be signed by the nursing home administrator.<sup>12</sup>
- Include the contact information for Disability Rights Florida, the state protection & advocacy agency, for residents with intellectual and developmental disabilities or those with mental illness.<sup>13</sup>

### **PRACTICE TIPS**

- Check the written notice carefully for any deficiencies in the requirements above.
- If a "significant" change is made to the information in the discharge notice, e.g., a change in the discharge location, a new notice that describes the change(s) must be given to the resident as soon as practicable and the discharge date "resets" to provide 30 days notice.<sup>14</sup>

### **The documentation of an eviction in a resident's medical record must:**

- State the reason for the transfer or discharge.<sup>15</sup>
- Be performed by the resident's physician if the reason for eviction is that the facility is unable to meet the resident's needs or that the resident's condition has improved sufficiently to no longer need the facility's services.<sup>16</sup>
- Be performed by a physician if the eviction is based on the resident endangering others.<sup>17</sup>
- Include "the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s)" if the eviction is based on the facility's inability to meet the resident's needs.<sup>18</sup>

### **A resident can challenge an eviction in an administrative hearing**

- A resident has 90 days after receiving notice of eviction to request an administrative hearing to challenge the proposed eviction.<sup>19</sup>
- If a request for a fair hearing is made within 10 days of receiving the eviction notice, the facility cannot make the resident leave the facility while awaiting a hearing or a hearing decision unless an emergency eviction is necessary pursuant to state or federal law.<sup>20</sup>
- The DCF Office of Appeal Hearings conducts administrative discharge hearings.<sup>21</sup>
- The procedures are equivalent to those used for Medicaid fair hearings.<sup>22</sup>
- The resident (or a legal representative) and the facility administrator (or a legal representative) must be present at all hearings.<sup>23</sup>
- A representative of the Ombudsman may also be present at the hearing.<sup>24</sup>
- The resident or a legal representative has the right to present, question, or refute evidence and testimony, including the opportunity to bring witnesses and cross-examine adverse witnesses.<sup>25</sup>
- The nursing facility has the burden of proof to establish by clear and convincing evidence that the proposed eviction is legal.<sup>26</sup>
- Final orders must be issued in writing within 90 days of a hearing request.<sup>27</sup>
- A resident may appeal an adverse hearing decision to the district court of appeal (DCA) in the district where the facility is located.<sup>28</sup>

## PRACTICE TIPS

- The discharge notice includes an appeal form that the resident can complete and file with the Office of Appeal Hearings of the Department of Children and Families (DCF): [Fair Hearing Request For Transfer or Discharge From a Nursing Home](#).
- A hearing request should be emailed to [appeal.hearings@myflfamilies.com](mailto:appeal.hearings@myflfamilies.com).
- A facility must provide residents reasonable access to a telephone, the internet, and items to send mail for them to communicate.<sup>29</sup>
- Nursing home final orders can be located at <https://www.doah.state.fl.us/FLAIO> by narrowing the search of “Agency” to “Department of Children and Families” and “Subject” to “Nursing Home Discharge” (2020 to current), “Public Assistance - Medicaid” (2019), or “Public Assistance - Other” (2018 and earlier). All nursing home discharge final orders are distinguished by an “N” in the case number after a two-digit number corresponding to the year the hearing was requested. One can review these orders for a better understanding of legal issues & advocacy strategies.

## Additional Resources & Authority

- **State Operations Manual–Guidance to Surveyors for Long-Term Care Facilities:** <https://www.cms.gov/files/document/appendix-pp-guidance-surveyor-long-term-care-facilities.pdf> (CMS' program issuances, operating instructions, policies, and procedures provide a relevant source of Medicare and Medicaid information; updated guidance issued on June 29, 2022, will go into effect on October 24, 2022). *See also:*
  - **Understanding CMS's New Nursing Facility Guidance** <https://justiceinaging.org/wp-content/uploads/2022/07/Understanding-CMSs-New-NF-Guidance-Issue-Brief.pdf> (2022 issue brief by Eric Carlson, Justice in Aging)
  - **Summary of CMS's Updated Nursing Home Guidance** <https://theconsumervoice.org/uploads/files/issues/phase-3-summary.pdf> (2022 reference guide by the National Consumer Voice for Quality Long-Term Care)
- **NCLER Defending Evictions from Nursing Homes and Assisted Living Facilities:** <https://ncler.acl.gov/pdf/LTC%20and%20Evictions%20PowerPoint.pdf> (2017 PowerPoint presentation by Eric Carlson, Justice in Aging)
- **Nursing Home Resident Rights Advocacy:** [https://www.floridahealthjustice.org/uploads/1/1/5/5/115598329/2018\\_nursing\\_home\\_residents\\_rights\\_handout.pptx](https://www.floridahealthjustice.org/uploads/1/1/5/5/115598329/2018_nursing_home_residents_rights_handout.pptx) (2018 PowerPoint presentation by Edwin M. Boyer, Florida Elder Law Attorney)
- **Fair Hearing Request For Transfer or Discharge From a Nursing Home:** [https://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Long\\_Term\\_Care/DOCs/Nursing\\_Home\\_Docs/Hotline\\_Posters/FINAL\\_AHCA31200003TransferDischargeFairHearingRequestApril2014.pdf](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/DOCs/Nursing_Home_Docs/Hotline_Posters/FINAL_AHCA31200003TransferDischargeFairHearingRequestApril2014.pdf) (Official form requesting an administrative hearing appeal of nursing facility transfer or discharge)
- **DCF Program Policy Manual Calculation of Benefits:** <https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/2600.pdf> (Manual to assist with determining the amount of an individual's income which is designated as a Personal Needs Allowance by program)

- 
1. The term “eviction” is used to refer to involuntary transfers or discharges.
  2. Under the federal Nursing Home Reform Law (NHRL), which governs all nursing facilities that accept Medicare and/or Medicaid, these six reasons are specified as the only legal grounds for eviction. Generally, the law applies to all residents of a certified nursing facility, regardless of how any single resident pays for his or her care. *See*, 42 C.F.R. § 483.15(c)(1)(i).
  3. Fla. Stat. § 400.0255(3).
  4. Surveyor’s Guideline to 42 C.F.R. § 483.10(g)(17)-(18) (Tag F582), pp. 57-58, Appendix PP to CMS State Operations Manual.
  5. 42 C.F.R. § 483.15(c)(1)(i)(E); Surveyor’s Guideline to 42 C.F.R. § 483.15(c)(1)-(2) (Tag F622), p. 180, Appendix PP to CMS State Operations Manual.
  6. 42 C.F.R. §§ 483.10(g)(4)(i)(B), (iii), (g)(13); Surveyor’s Guideline to 42 C.F.R. § 483.10(g)(13) (Tag F579), p. 53, & § 483.15(c) (Tag F622), p. 180, Appendix PP to CMS State Operations Manual.
  7. 42 C.F.R. § 483.15(c)(1)(i)(E); DCF CFOP 165-22, Chapter 2600, Section 2640.0118.
  8. 42 C.F.R. § 483.15(e)(1)(ii); Surveyor’s Guideline to 42 C.F.R. § 483.15(e) (Tag F626), p. 194, Appendix PP to CMS State Operations Manual.
  9. 42 C.F.R. § 483.15(c)(3)(i); Fla. Stat. §§ 400.0255(7)–(8).
  10. 42 C.F.R. § 483.15(c)(4); Fla. Stat. § 400.0255(7). *See also* 400.0255(11).
  11. 42 C.F.R. § 483.15(c)(5); Fla. Stat. § 400.0255(8).
  12. Fla. Stat. § 400.0255(3).
  13. 42 C.F.R. §§ 483.15(c)(5)(vi)-(vii)
  14. 42 C.F.R. § 483.15(c)(6); Surveyor’s Guideline to 42 C.F.R. § 483.15(c)(3)-(6) (Tag F623), p. 189, Appendix PP to CMS State Operations Manual.
  15. 42 C.F.R. § 483.15(c)(2)(i)(A).
  16. 42 C.F.R. § 483.15(c)(2)(ii).
  17. *Id.*
  18. 42 C.F.R. § 483.15(c)(2)(i)(B).
  19. Fla. Stat. § 400.0255(10)(a).
  20. Fla. Stat. §§ 400.0255(10)(b)–(11).
  21. Fla. Stat. § 400.0255(15)(a).
  22. Fla. Stat. § 400.0255(15)(b).
  23. Fla. Stat. § 400.0255(13).
  24. *Id.*
  25. 42 C.F.R. §§ 431.242, 483.204; Fla. Admin. Code R. 65-2.057(2)–(3).
  26. Fla. Admin. Code R. 65-2.060(1); Fla. Stat. § 400.0255(15)(b).
  27. Fla. Admin. Code R. 65-2.066(5); Fla. Stat. § 400.0255(15)(b).
  28. Fla. Stat. § 400.0255(15)(d).
  29. 42 C.F.R. § 483.10(g)(7).