
OLR Bill Analysis

sHB 6552

AN ACT CONCERNING THE TRANSFER AND DISCHARGE OF NURSING FACILITY RESIDENTS.

SUMMARY:

This bill changes the process that the Department of Social Services (DSS), nursing homes, and their residents or their representatives must follow when nursing homes transfer or discharge residents, or when beds are reserved for residents when they are hospitalized.

With respect to transfers and discharges, the bill:

1. grants residents an explicit right to appeal these moves;
2. establishes the circumstances in which a move can be stayed;
3. reduces the time frame for the DSS commissioner to issue appeal hearing decisions for moves;
4. requires the home to readmit the resident when DSS determines that the move was done in a way that violates the law;
5. explicitly allows residents to request hearings when informed that they no longer need nursing home care, including residents with mental disabilities in homes that transfer or discharge them when the homes cannot provided needed services;
6. refines the definition of "self-pay" residents for purposes of applying the law to them; and
7. requires nursing homes in receivership to comply with its transfer and discharge notice requirements.

Regarding bed-holds, the bill establishes three criteria one of which a home must meet in order to be able to refuse to readmit a resident. It

also sets up a consultation process for homes and residents when the home is concerned about readmitting a resident because it cannot meet the resident's needs or the resident may be a danger to himself, herself, or others. It requires the home to provide notice when it decides not to readmit. The notice must include the resident's right to a hearing to appeal the refusal. The bill requires DSS to hold hearings related to possible bed-hold law violations and changes how homes are assessed penalties for violations.

The bill requires hospitals to provide nursing homes with patient records and access to the patients when the hospitals refer the patients to nursing homes or when the patient requests the referral.

Lastly, the bill makes technical changes.

EFFECTIVE DATE: Upon passage

§ 1 — RESIDENT TRANSFERS AND DISCHARGES

Notice and Appeal Rights

Under current law, nursing homes must notify residents or a responsible party when they intend to transfer them to another facility or discharge them to a noninstitutional setting. Under the bill, (1) the transfer can also be to an institution and (2) the facility or institution must admit or provide care to the resident for more than 24 hours. The facility or institution can include a hospital emergency room.

By law, the notice must include the (1) reasons for the move; (2) date the move is effective; (3) where the resident will be going; (4) resident's right to appeal, procedures for initiating an appeal, and the date by which the appeal must be initiated in order to stay the transfer or discharge (10 days from the notice date); (5) resident's right to representation at an appeal hearing; and (6) home's bed-hold and readmission policies, when appropriate.

The bill explicitly grants residents the right to appeal these moves and gives them a 60 calendar-day deadline for doing so. To have the discharge stayed, the bill continues to require an appeal to be initiated within 10 days from the date the resident receives the notice but allows

this deadline to be extended if the resident demonstrates good cause for not meeting the deadline. The bill requires the notice to include both deadlines and the possibility of an extension of the 10-day deadline.

The bill also specifies that the notice's bed-hold and readmission information must be provided whenever a resident is transferred to a hospital, instead of "when appropriate."

Hearing Decision — Shorter Time for DSS Commissioner to Issue Decision

When transfers and discharges are appealed, the DSS commissioner must hold a hearing between 10 and 30 days from the date he receives the request. Under current law, he must issue a decision within 60 days from the end of the hearing or 90 days from the date the hearing is requested, whichever occurs sooner. The bill reduces these time frames to 30 days and 60 days, respectively.

Stays For Insufficient Notice

Except for an emergency or when the resident is not physically present in the nursing home, the bill requires the commissioner, when (1) he receives a transfer or discharge hearing request and (2) the home's notice does not comply with the law's requirements, to order a stay of the transfer or discharge within 10 days "after the date of receipt of the notice" (presumably, the date DSS receives the notice) and return the notice to the home. Once the home receives the notice, it must issue a revised notice that meets the law's requirements. Once it does, presumably, the stay is lifted.

Emergency Transfers and Discharges

By law, the transfer and discharge requirements are different when a home has to make an emergency transfer. For example, the home must provide the notice as soon as practicable, rather than 30 to 60 days before the move. Residents who are transferred on an emergency basis or receive notice of such transfers can request a hearing to appeal the move. Currently, they must request the hearing within 10 days of the notice or action. The bill permits the appeal to be considered after

the deadline if the residents can demonstrate that they failed to meet the deadline for good cause.

The bill also increases from seven to 15 the number of business days the commissioner has from the date he receives the hearing request to hold the hearing. And it requires the commissioner, or his designee, to issue a decision within 30 days from the date the hearing record is closed.

When a Home Moves a Resident in Violation of Law

Under the bill, if the DSS commissioner or his designee determines, after a hearing, that the home has transferred or discharged a resident in a way that violates the law or the bill, he can require the home to readmit the resident to a bed in a semi-private room, or a private room, if medically necessary. This can be done regardless of whether the resident (1) has already accepted placement in another home pending the hearing decision or (2) is awaiting availability of a bed in the home that transferred or discharged him or her.

Decisions

By law, the commissioner or his designee must send the nursing home a copy of its hearing decision. Under the bill, the commissioner must also send a copy to the resident; the resident's guardian or conservator, if any; legally liable relative; or other responsible party, if known.

Currently, the facility is deemed to have received the notice within five days from when it was mailed unless the resident or his or her guardian, conservator, legally liable relative, or other responsible party proves otherwise by a preponderance of evidence. The bill permits the facility to rebut this presumption by the same level of evidence.

Notice When Resident No Longer Needs Nursing Home Care

Under the bill, residents who receive notice from DSS or its agent stating that they no longer need the level of care that the nursing home provides (medical necessity determination, see BACKGROUND) and as a result, the resident's coverage for facility care (presumably

Medicaid) will stop, can request a hearing before the date Medicaid coverage is to end. Coverage must continue pending the hearing's outcome.

If the resident receives a separate notice of Medicaid denial for lack of medical necessity and of discharge from the home and requests a hearing to contest both actions, DSS must schedule one hearing for the resident to contest both.

Exemption When a Resident Has Mental Illness or a Developmental Disability

The bill also explicitly exempts from the general bar on transferring and discharging residents those facilities that by law must move residents with a diagnosis of mental illness or developmental disability who may require specialized services that the home cannot provide. Consequently, the bill applies all of the law's notice and hearing protections to these residents.

By law, nursing homes must notify the departments of Mental Health and Addiction Services and Developmental Services when a resident who is mentally ill or has a developmental disability, respectively, undergoes a change in condition that may require specialized services. When the home cannot provide those services, the law generally requires that the resident be transferred to a facility that can provide them or discharged when the resident does not require the services (CGS §§ 17b-359 & -360).

Self-Pay Residents

The bill refines the definition of "self-pay" residents for purposes of the transfer and discharge law. Currently, they are defined as residents who are not receiving state or municipal assistance to pay for their care. The bill excludes a resident who has (1) applied for Medicaid, (2) responded in a timely fashion to DSS requests for information that it needs to determine the resident's eligibility, and (3) not been determined eligible for benefits.

The law generally allows nursing homes to discharge self-pay residents for nonpayment of the home's daily rate or an arrearage of

more than 15 days.

§ 3 — When A Home is in Receivership

By law, a nursing home receiver may not transfer all of a home's residents and close the home without a court order and without preparing a discharge plan for its residents. The bill also requires the receiver to comply with its notice provisions before taking these actions.

It requires the receiver to notify each resident and resident's guardian or conservator, if any, legally liable relative, or other responsible party, if known, when a home is placed in receivership, regardless of whether it is medically contraindicated. Under current law, the receiver must notify the residents and family, except where medically contraindicated.

§ 2 — BED HOLDS WHEN NURSING HOME RESIDENT IS HOSPITALIZED

By law, nursing homes generally must reserve the bed of a nursing home resident when he or she must be hospitalized or goes home for a visit and expects to return to the home. The law establishes time frames for notice when this occurs and requires Medicaid to pay the homes that reserve the beds.

Bed Type For Residents Whose Hospitalization Period Exceeds Bed-Hold Period

Under current law, if a nursing home resident's hospitalization exceeds the period of time the home must hold his or her bed (generally, 15 days), or the home is otherwise not required to hold the same bed for the resident, the home must take certain actions. For example, the home must provide the resident with the first bed available when it receives notice that the hospital is discharging the resident. The bill instead requires the home to provide the discharged resident with a semi-private or, if medically necessary, a private room. The home must do this once it receives notice from the hospital that the resident is "medically ready" for discharge.

The law, unchanged by the bill, also requires the home to grant the

resident priority admission over a new applicant.

When a Home Refuses Readmission

The bill provides that, if the DSS commissioner or his designee finds that a resident has been refused readmission in violation of the bed hold law, the resident has the right to be readmitted to the transferring home, as described above, regardless of whether the resident has accepted placement in another facility while awaiting a bed in the original facility.

Consultation. If a home is concerned about a readmission based on its ability to meet the resident's care needs or the resident presenting a danger to himself or others, the bill requires it to request a consultation with the hospital and the resident or the resident's representative within 24 hours of receiving the hospital's notice that the resident is medically ready to leave. The purpose of the consultation is to develop an appropriate care plan to safely meet the resident's nursing home care needs, including determining a readmission date that best meets these needs.

The bill requires the resident's wishes and the hospital's recommendations to be considered as part of the consultation process. The home must reserve the bed until the consultation process is complete. The consultation must begin as soon as practicable and must be completed within three business days after the home requests it. The hospital must participate in the consultation, grant the nursing home access to the resident in the hospital, and permit the home to review the resident's hospital records.

When a Home May Refuse to Readmit. The bill provides that a nursing home may not refuse to readmit a resident unless (1) it cannot meet the resident's needs, (2) the resident no longer needs the home's services due to improved health, or (3) other residents' health and safety would be endangered if the home were to readmit the resident.

If a nursing home decides to refuse to readmit a resident either without requesting a consultation or following a consultation, it must

notify the hospital; the resident; and the resident's guardian, conservator, legally liable relative, or other responsible party within 24 hours of making the decision. The notice, which must be written, must indicate the following:

1. the refusal and reasons for it;
2. the resident's right to appeal and procedures for initiating the appeal (as the DSS commissioner determines);
3. that the resident has 10 days from the date he or she receives the notice to initiate an appeal, which can be extended for good cause;
4. contact information, including the name, mailing address, and telephone number for the long-term care ombudsman; and
5. the resident's right to represent himself or herself or be represented by counsel, a relative, a friend, or other spokesperson.

If the resident is, or the nursing home alleges a resident is, mentally ill or developmentally disabled, the home must include in the notice the contact information, including the name, mailing address, and telephone number, of the Office of Protection and Advocacy for Persons with Disabilities.

Right to Hearing for Violation of Bed-Hold Law

The bill requires the commissioner to hold a hearing to determine whether the home has violated any part of the bed-hold law, apparently regardless of whether one is requested. The commissioner or his designee must (1) convene the hearing within 15 days from the date he receives the request and (2) issue a decision within 30 days of the date the hearing record is closed.

The bill authorizes the commissioner or his designee (presumably only after a hearing is held) to require the home to readmit the resident to a semi-private room or, when medically necessary, a private one.

By law, these types of hearing decisions can be appealed to Superior Court. The bill requires the court to consider these appeals as privileged in order to dispose of them with the least possible delay (which the court must already do with appeals of transfers and discharges).

If a home does not readmit a resident after a consultation, the bill permits the resident to file a complaint with the DSS commissioner. If the resident has already requested a hearing under the bill, the commissioner must stay an investigation of the complaint until he issues a decision following the hearing.

Penalties

Under the bill, each day a nursing home fails to readmit a resident in violation of the bed-hold law is considered a separate violation for purposes of determining a penalty. When a resident who has been through a consultation requests a hearing, no penalty can accrue from the date a consultation is requested until the hearing decision is issued, if the commissioner or his designee finds that the nursing home has acted in good faith in refusing to readmit the resident.

If a resident files a complaint but does not request a hearing, no penalty can accrue while DSS conducts an investigation, provided the commissioner finds the home's refusal to readmit was done in good faith.

The current maximum penalty DSS may impose is \$8,500 per violation.

§ 4 — HOSPITAL REFERRALS TO NURSING HOMES

The bill requires a hospital to make copies of a patient's hospital record available to a nursing home whenever it refers the patient to a home as part of their discharge planning process or when the patient requests such a referral. The hospital must also allow the home access to the patient for care planning and consultation purposes.

BACKGROUND

Preadmission Screening and Resident Reviews (PASSR)

Federal law prohibits a Medicaid-certified nursing home from admitting an applicant with serious mental illness or mental retardation (developmental disability) or a related condition unless the individual is properly screened, thoroughly evaluated, found to be appropriate for a nursing home placement, and will receive all specialized services necessary to meet his or her unique needs. Once admitted, these residents must be reviewed when there is a significant change in their physical or mental condition to determine if the home is still the most appropriate placement. Ascend Management Innovations, LLC. contracts with DSS to perform these reviews.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/22/2011)