



# House of Representatives

General Assembly

**File No. 259**

January Session, 2021

Substitute House Bill No. 6317

*House of Representatives, April 6, 2021*

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT PROHIBITING DISCHARGES FROM NURSING HOMES AND RESIDENTIAL CARE HOMES TO TEMPORARY OR UNSTABLE HOUSING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-535 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) For the purposes of this section: (1) "Facility" means an entity  
4 certified as a nursing facility under the Medicaid program or an entity  
5 certified as a skilled nursing facility under the Medicare program or  
6 with respect to facilities that do not participate in the Medicaid or  
7 Medicare programs, a chronic and convalescent nursing home or a rest  
8 home with nursing supervision as defined in section 19a-521; (2)  
9 "continuing care facility which guarantees life care for its residents" has  
10 the same meaning as provided in section 17b-354; (3) "transfer" means  
11 the movement of a resident from one facility to another facility or  
12 institution, including, but not limited to, a hospital emergency

13 department, if the resident is admitted to the facility or institution or is  
14 under the care of the facility or institution for more than twenty-four  
15 hours; (4) "discharge" means the movement of a resident from a facility  
16 to a noninstitutional setting; (5) "self-pay resident" means a resident who  
17 is not receiving state or municipal assistance to pay for the cost of care  
18 at a facility, but shall not include a resident who has filed an application  
19 with the Department of Social Services for Medicaid coverage for facility  
20 care but has not received an eligibility determination from the  
21 department on such application, provided the resident has timely  
22 responded to requests by the department for information that is  
23 necessary to make such determination; and (6) "emergency" means a  
24 situation in which a failure to effect an immediate transfer or discharge  
25 of the resident that would endanger the health, safety or welfare of the  
26 resident or other residents.

27 (b) A facility shall not transfer or discharge a resident from the facility  
28 except to meet the welfare of the resident which cannot be met in the  
29 facility, or unless the resident no longer needs the services of the facility  
30 due to improved health, the facility is required to transfer the resident  
31 pursuant to section 17b-359 or 17b-360, or the health or safety of  
32 individuals in the facility is endangered, or in the case of a self-pay  
33 resident, for the resident's nonpayment or arrearage of more than fifteen  
34 days of the per diem facility room rate, or the facility ceases to operate.  
35 In each case the basis for transfer or discharge shall be documented in  
36 the resident's medical record by a physician or an advanced practice  
37 registered nurse. In each case where the welfare, health or safety of the  
38 resident is concerned the documentation shall be by the resident's  
39 physician or the resident's advanced practice registered nurse. A facility  
40 that is part of a continuing care facility which guarantees life care for its  
41 residents may transfer or discharge (1) a self-pay resident who is a  
42 member of the continuing care community and who has intentionally  
43 transferred assets in a sum that will render the resident unable to pay  
44 the costs of facility care in accordance with the contract between the  
45 resident and the facility, or (2) a self-pay resident who is not a member  
46 of the continuing care community and who has intentionally transferred  
47 assets in a sum that will render the resident unable to pay the costs of a

48 total of forty-two months of facility care from the date of initial  
49 admission to the facility.

50 (c) (1) Before effecting any transfer or discharge of a resident from the  
51 facility, the facility shall notify, in writing, the resident and the resident's  
52 guardian or conservator, if any, or legally liable relative or other  
53 responsible party if known, of the proposed transfer or discharge, the  
54 reasons therefor, the effective date of the proposed transfer or discharge,  
55 the location to which the resident is to be transferred or discharged, the  
56 right to appeal the proposed transfer or discharge and the procedures  
57 for initiating such an appeal as determined by the Department of Social  
58 Services, the date by which an appeal must be initiated in order to  
59 preserve the resident's right to an appeal hearing and the date by which  
60 an appeal must be initiated in order to stay the proposed transfer or  
61 discharge and the possibility of an exception to the date by which an  
62 appeal must be initiated in order to stay the proposed transfer or  
63 discharge for good cause, that the resident may represent himself or  
64 herself or be represented by legal counsel, a relative, a friend or other  
65 spokesperson, and information as to bed hold and nursing home  
66 readmission policy when required in accordance with section 19a-537.  
67 The notice shall also include the name, mailing address and telephone  
68 number of the State Long-Term Care Ombudsman. If the resident is, or  
69 the facility alleges a resident is, mentally ill or developmentally  
70 disabled, the notice shall include the name, mailing address and  
71 telephone number of the nonprofit entity designated by the Governor in  
72 accordance with section 46a-10b to serve as the Connecticut protection  
73 and advocacy system. The notice shall be given at least thirty days and  
74 no more than sixty days prior to the resident's proposed transfer or  
75 discharge, except where the health or safety of individuals in the facility  
76 are endangered, or where the resident's health improves sufficiently to  
77 allow a more immediate transfer or discharge, or where immediate  
78 transfer or discharge is necessitated by urgent medical needs or where  
79 a resident has not resided in the facility for thirty days, in which cases  
80 notice shall be given as many days before the transfer or discharge as  
81 practicable.

82 (2) The resident may initiate an appeal pursuant to this section by  
83 submitting a written request to the Commissioner of Social Services not  
84 later than sixty calendar days after the facility issues the notice of the  
85 proposed transfer or discharge, except as provided in subsection [(h)] (i)  
86 of this section. In order to stay a proposed transfer or discharge, the  
87 resident must initiate an appeal not later than twenty days after the date  
88 the resident receives the notice of the proposed transfer or discharge  
89 from the facility unless the resident demonstrates good cause for failing  
90 to initiate such appeal within the twenty-day period.

91 (d) No resident shall be transferred or discharged from any facility as  
92 a result of a change in the resident's status from self-pay or Medicare to  
93 Medicaid provided the facility offers services to both categories of  
94 residents. Any such resident who wishes to be transferred to another  
95 facility that has agreed to accept the resident may do so upon giving at  
96 least fifteen days written notice to the administrator of the facility from  
97 which the resident is to be transferred and a copy thereof to the  
98 appropriate advocate of such resident. The resident's advocate may help  
99 the resident complete all administrative procedures relating to a  
100 transfer.

101 (e) Except in an emergency or in the case of transfer to a hospital, no  
102 resident shall be transferred or discharged from a facility unless a  
103 discharge plan has been developed by the personal physician or  
104 advanced practice registered nurse of the resident or the medical  
105 director in conjunction with the nursing director, social worker or other  
106 health care provider. To minimize the disruptive effects of the transfer  
107 or discharge on the resident, the person responsible for developing the  
108 plan shall consider the feasibility of placement near the resident's  
109 relatives, the acceptability of the placement to the resident and the  
110 resident's guardian or conservator, if any, or the resident's legally liable  
111 relative or other responsible party, if known, and any other relevant  
112 factors that affect the resident's adjustment to the move. The plan shall  
113 contain a written evaluation of the effects of the transfer or discharge on  
114 the resident and a statement of the action taken to minimize such effects.  
115 In addition, the plan shall outline the care and kinds of services that the

116 resident shall receive upon transfer or discharge. Not less than thirty  
117 days prior to an involuntary transfer or discharge, a copy of the  
118 discharge plan shall be provided to the resident's personal physician or  
119 advanced practice registered nurse if the discharge plan was prepared  
120 by the medical director, to the resident and the resident's guardian or  
121 conservator, if any, or legally liable relative or other responsible party,  
122 if known.

123 (f) No resident shall be involuntarily transferred or discharged from  
124 a facility to a homeless shelter or to a temporary or unstable housing  
125 situation. As used in this subsection, "temporary or unstable housing  
126 situation" includes, but is not limited to, any housing (1) in a hotel or  
127 motel or similar lodging for less than thirty days, (2) in which the  
128 resident does not have a legal right of occupancy, or (3) where, in  
129 accordance with the resident's discharge plan, (A) the health needs of  
130 the resident cannot be met, or (B) the resident has not designated an  
131 available and willing caregiver, as defined in section 19a-535c.

132 [(f)] (g) No resident shall be involuntarily transferred or discharged  
133 from a facility if such transfer or discharge is medically contraindicated.

134 [(g)] (h) The facility shall be responsible for assisting the resident in  
135 finding appropriate placement.

136 [(h)] (i) (1) Except in the case of an emergency, as provided in  
137 subdivision (4) of this subsection, upon receipt of a request for a hearing  
138 to appeal any proposed transfer or discharge, the Commissioner of  
139 Social Services or the commissioner's designee shall hold a hearing to  
140 determine whether the transfer or discharge is being effected in  
141 accordance with this section. A hearing shall be convened not less than  
142 ten, but not more than thirty days from the date of receipt of such  
143 request and a written decision made by the commissioner or the  
144 commissioner's designee not later than thirty days after the date of  
145 termination of the hearing or not later than sixty days after the date of  
146 the hearing request, whichever occurs sooner. The hearing shall be  
147 conducted in accordance with chapter 54. In each case the facility shall  
148 prove by a preponderance of the evidence that it has complied with the

149 provisions of this section. Except in the case of an emergency or in  
150 circumstances when the resident is not physically present in the facility,  
151 whenever the Commissioner of Social Services receives a request for a  
152 hearing in response to a notice of proposed transfer or discharge and  
153 such notice does not meet the requirements of subsection (c) of this  
154 section, the commissioner shall, not later than ten business days after  
155 the date of receipt of such notice from the resident or the facility, order  
156 the transfer or discharge stayed and return such notice to the facility.  
157 Upon receipt of such returned notice, the facility shall issue a revised  
158 notice that meets the requirements of subsection (c) of this section.

159 (2) The resident, the resident's guardian, conservator, legally liable  
160 relative or other responsible party shall have an opportunity to examine,  
161 during regular business hours at least three business days prior to a  
162 hearing conducted pursuant to this section, the contents of the resident's  
163 file maintained by the facility and all documents and records to be used  
164 by the commissioner or the commissioner's designee or the facility at the  
165 hearing. The facility shall have an opportunity to examine during  
166 regular business hours at least three business days prior to such a  
167 hearing, all documents and records to be used by the resident at the  
168 hearing.

169 (3) If a hearing conducted pursuant to this section involves medical  
170 issues, the commissioner or the commissioner's designee may order an  
171 independent medical assessment of the resident at the expense of the  
172 Department of Social Services that shall be made part of the hearing  
173 record.

174 (4) In an emergency the notice required pursuant to subsection (c) of  
175 this section shall be provided as soon as practicable. A resident who is  
176 transferred or discharged on an emergency basis or a resident who  
177 receives notice of such a transfer or discharge may contest the action by  
178 requesting a hearing in writing not later than twenty days after the date  
179 of receipt of notice or not later than twenty days after the date of transfer  
180 or discharge, whichever is later, unless the resident demonstrates good  
181 cause for failing to request a hearing within the twenty-day period. A

182 hearing shall be held in accordance with the requirements of this  
183 subsection not later than fifteen business days after the date of receipt  
184 of the request. The commissioner, or the commissioner's designee, shall  
185 issue a decision not later than thirty days after the date on which the  
186 hearing record is closed.

187 (5) Except in the case of a transfer or discharge effected pursuant to  
188 subdivision (4) of this subsection, (A) an involuntary transfer or  
189 discharge shall be stayed pending a decision by the commissioner or the  
190 commissioner's designee, and (B) if the commissioner or the  
191 commissioner's designee determines the transfer or discharge is being  
192 effected in accordance with this section, the facility may not transfer or  
193 discharge the resident prior to fifteen days from the date of receipt of  
194 the decision by the resident and the resident's guardian or conservator,  
195 if any, or the resident's legally liable relative or other responsible party  
196 if known.

197 (6) If the commissioner, or the commissioner's designee, determines  
198 after a hearing held in accordance with this section that the facility has  
199 transferred or discharged a resident in violation of this section, the  
200 commissioner, or the commissioner's designee, may require the facility  
201 to readmit the resident to a bed in a semiprivate room or in a private  
202 room, if a private room is medically necessary, regardless of whether or  
203 not the resident has accepted placement in another facility pending the  
204 issuance of a hearing decision or is awaiting the availability of a bed in  
205 the facility from which the resident was transferred or discharged.

206 (7) A copy of a decision of the commissioner or the commissioner's  
207 designee shall be sent to the facility and to the resident, the resident's  
208 guardian, conservator, if any, legally liable relative or other responsible  
209 party, if known. The decision shall be deemed to have been received not  
210 later than five days after the date it was mailed, unless the facility, the  
211 resident or the resident's guardian, conservator, legally liable relative or  
212 other responsible party proves otherwise by a preponderance of the  
213 evidence. The Superior Court shall consider an appeal from a decision  
214 of the Department of Social Services pursuant to this section as a

215 privileged case in order to dispose of the case with the least possible  
216 delay.

217        [(i)] (j) A resident who receives notice from the Department of Social  
218 Services or its agent that the resident is no longer in need of the level of  
219 care provided by a facility and that, consequently, the resident's  
220 coverage for facility care will end, may request a hearing by the  
221 Commissioner of Social Services in accordance with the provisions of  
222 section 17b-60. If the resident requests a hearing prior to the date that  
223 Medicaid coverage for facility care is to end, Medicaid coverage shall  
224 continue pending the outcome of the hearing. If the resident receives a  
225 notice of denial of Medicaid coverage from the department or its agent  
226 and also receives a notice of discharge from the facility pursuant to  
227 subsection (c) of this section and the resident requests a hearing to  
228 contest each proposed action, the department may schedule one hearing  
229 at which the resident may contest both actions.

230        [(j)] (k) Whenever a facility is discharging a resident to the resident's  
231 home in the community, the discharge shall be in accordance with  
232 sections 19a-535c and 19a-535d.

233        Sec. 2. Section 19a-535a of the general statutes is repealed and the  
234 following is substituted in lieu thereof (*Effective from passage*):

235        (a) As used in this section, a "facility" means a residential care home,  
236 as defined in section 19a-490.

237        (b) A facility shall not transfer or discharge a resident from the facility  
238 unless (1) the transfer or discharge is necessary to meet the resident's  
239 welfare and the resident's welfare cannot be met in the facility, (2) the  
240 transfer or discharge is appropriate because the resident's health has  
241 improved sufficiently so the resident no longer needs the services  
242 provided by the facility, (3) the health or safety of individuals in the  
243 facility is endangered, (4) the resident has failed, after reasonable and  
244 appropriate notice, to pay for a stay or a requested service, at the facility  
245 or (5) the facility ceases to operate. In the case of an involuntary transfer  
246 or discharge the resident and, if known, his legally liable relative,

247 guardian or conservator shall be given a thirty-day written notification  
248 which includes the reason for the transfer or discharge and notice of the  
249 right of the resident to appeal a transfer or discharge by the facility  
250 pursuant to subsection [(d)] (e) of this section. No resident shall be  
251 involuntarily transferred or discharged from a facility if such transfer or  
252 discharge presents imminent danger of death.

253 (c) The facility shall be responsible for assisting the resident in finding  
254 appropriate placement. A discharge plan, prepared by the facility,  
255 which indicates the resident's individual needs shall accompany the  
256 patient.

257 (d) No resident shall be involuntarily transferred or discharged from  
258 a facility to a homeless shelter or to a temporary or unstable housing  
259 situation. As used in this subsection, "temporary or unstable housing  
260 situation" includes, but is not limited to, any housing (1) in a hotel or  
261 motel or similar lodging for less than thirty days, (2) in which the  
262 resident does not have a legal right of occupancy, or (3) where, in  
263 accordance with the resident's discharge plan, the health needs of the  
264 resident cannot be met.

265 [(d)] (e) (1) For transfers or discharges effected on or after October 1,  
266 1989, a resident or his legally liable relative, guardian or conservator  
267 who has been notified by a facility, pursuant to subsection (b) of this  
268 section, that he will be transferred or discharged from the facility may  
269 appeal such transfer or discharge to the Commissioner of Public Health  
270 by filing a request for a hearing with the commissioner within ten days  
271 of receipt of such notice. Upon receipt of any such request, the  
272 commissioner or his designee shall hold a hearing to determine whether  
273 the transfer or discharge is being effected in accordance with this  
274 section. Such a hearing shall be held within seven business days of  
275 receipt of such request and a determination made by the commissioner  
276 or his designee within twenty days of the termination of the hearing.  
277 The hearing shall be conducted in accordance with chapter 54.

278 (2) In an emergency the facility may request that the commissioner  
279 make a determination as to the need for an immediate transfer or

280 discharge of a resident. Before making such a determination, the  
 281 commissioner shall notify the resident and, if known, his legally liable  
 282 relative, guardian or conservator. The commissioner shall issue such a  
 283 determination no later than seven days after receipt of the request for  
 284 such determination. If, as a result of such a request, the commissioner or  
 285 his designee determines that a failure to effect an immediate transfer or  
 286 discharge would endanger the health, safety or welfare of the resident  
 287 or other residents, the commissioner or his designee shall order the  
 288 immediate transfer or discharge of the resident from the facility. A  
 289 hearing shall be held in accordance with the requirements of  
 290 subdivision (1) of this subsection within seven business days of the  
 291 issuance of any determination issued pursuant to this subdivision.

292 (3) Any involuntary transfer or discharge shall be stayed pending a  
 293 determination by the commissioner or his designee. Notwithstanding  
 294 any provision of the general statutes, the determination of the  
 295 commissioner or his designee after a hearing shall be final and binding  
 296 upon all parties and not subject to any further appeal.

|   |                     |          |
|---|---------------------|----------|
| This act shall take effect as follows and shall amend the following sections: |                     |          |
| Section 1   | <i>from passage</i> | 19a-535  |
| Sec. 2  | <i>from passage</i> | 19a-535a |

**Statement of Legislative Commissioners:**

In Sections 1(f)(2) and 1(f)(3), provisions were rewritten for clarity and internal consistency.

**HS**      *Joint Favorable Subst.*

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*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill prohibits the involuntary transfer or discharge of residents from nursing homes and residential care homes to homeless shelters or certain temporary or unstable housing, which is not anticipated to result in a fiscal impact to the state.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****sHB 6317*****AN ACT PROHIBITING DISCHARGES FROM NURSING HOMES AND RESIDENTIAL CARE HOMES TO TEMPORARY OR UNSTABLE HOUSING.*****SUMMARY**

This bill prohibits nursing homes and residential care homes from involuntarily transferring or discharging a resident to a homeless shelter or to a temporary or unstable housing situation. Under the bill, a “temporary or unstable housing situation” includes:

1. a hotel, motel, or similar lodging for less than 30 days;
2. housing in which the resident does not have a legal right of occupancy; and
3. housing where the resident’s health needs cannot be met in accordance with his or her discharge plan (see BACKGROUND).

For nursing home discharges, temporary or unstable housing also includes housing where there is no available and willing designated caregiver in accordance with the resident’s discharge plan (see BACKGROUND).

EFFECTIVE DATE: Upon passage

**BACKGROUND*****Discharge Planning***

Under existing law, nursing homes and residential care homes may transfer or discharge residents under various circumstances, including if the resident no longer needs the facility’s services or if the resident’s welfare cannot be met in the facility.

For nursing homes, except for emergencies or transfers to hospitals, the law generally requires health care providers to develop a discharge plan that considers (1) the feasibility of placing a resident near his or her relatives; (2) whether the placement is acceptable to the resident and his or her conservator, guardian, or other responsible party; and (3) any other relevant factors that affect the resident's adjustment to the move.

By law, residential care homes are responsible for assisting the resident in finding appropriate placement. The law prohibits involuntary transfer or discharge if doing so presents imminent danger of death. The law requires the facility to prepare a discharge plan that will accompany the patient and indicate his or her individual needs.

### ***Willing Designated Caregiver for Nursing Home Residents***

When a discharge plan from a nursing home indicates that the resident will be discharged to his or her home, the law requires the nursing home to allow the resident to designate a caregiver. If the resident does so, the nursing home must record the designation and related information; make multiple reasonable attempts to contact the caregiver regarding the discharge as soon as practicable; and provide the caregiver with instructions in post-discharge assistance tasks.

By law, a caregiver is any individual who the resident designates to provide post-discharge assistance in the resident's home in the community. The term "caregiver" includes a relative, spouse, partner, friend, or neighbor who has a significant relationship with the resident and does not include anyone who receives compensation for providing this assistance.

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 17    Nay 2    (03/18/2021)