



General Assembly

January Session, 2021

Raised Bill No. 6317

LCO No. 2594



Referred to Committee on HUMAN SERVICES

Introduced by:
(HS)

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 Section 19a-535 of the general statutes is repealed and the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 any housing where the health or safety needs of the resident
125 cannot be met in accordance with section 47a-7 or by an available and
126 willing designated caregiver pursuant to section 19a-535c.

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

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

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

149 section, the commissioner shall, not later than ten business days after
150 the date of receipt of such notice from the resident or the facility, order
151 the transfer or discharge stayed and return such notice to the facility.
152 Upon receipt of such returned notice, the facility shall issue a revised
153 notice that meets the requirements of subsection (c) of this section.

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

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

169 (4) In an emergency the notice required pursuant to subsection (c) of
170 this section shall be provided as soon as practicable. A resident who is
171 transferred or discharged on an emergency basis or a resident who
172 receives notice of such a transfer or discharge may contest the action by
173 requesting a hearing in writing not later than twenty days after the date
174 of receipt of notice or not later than twenty days after the date of transfer
175 or discharge, whichever is later, unless the resident demonstrates good
176 cause for failing to request a hearing within the twenty-day period. A
177 hearing shall be held in accordance with the requirements of this
178 subsection not later than fifteen business days after the date of receipt
179 of the request. The commissioner, or the commissioner's designee, shall
180 issue a decision not later than thirty days after the date on which the
181 hearing record is closed.

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

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

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

212 [(i)] (j) A resident who receives notice from the Department of Social
213 Services or its agent that the resident is no longer in need of the level of
214 care provided by a facility and that, consequently, the resident's

215 coverage for facility care will end, may request a hearing by the
216 Commissioner of Social Services in accordance with the provisions of
217 section 17b-60. If the resident requests a hearing prior to the date that
218 Medicaid coverage for facility care is to end, Medicaid coverage shall
219 continue pending the outcome of the hearing. If the resident receives a
220 notice of denial of Medicaid coverage from the department or its agent
221 and also receives a notice of discharge from the facility pursuant to
222 subsection (c) of this section and the resident requests a hearing to
223 contest each proposed action, the department may schedule one hearing
224 at which the resident may contest both actions.

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

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

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

232 (b) A facility shall not transfer or discharge a resident from the facility
233 unless (1) the transfer or discharge is necessary to meet the resident's
234 welfare and the resident's welfare cannot be met in the facility, (2) the
235 transfer or discharge is appropriate because the resident's health has
236 improved sufficiently so the resident no longer needs the services
237 provided by the facility, (3) the health or safety of individuals in the
238 facility is endangered, (4) the resident has failed, after reasonable and
239 appropriate notice, to pay for a stay or a requested service, at the facility
240 or (5) the facility ceases to operate. In the case of an involuntary transfer
241 or discharge the resident and, if known, his legally liable relative,
242 guardian or conservator shall be given a thirty-day written notification
243 which includes the reason for the transfer or discharge and notice of the
244 right of the resident to appeal a transfer or discharge by the facility
245 pursuant to subsection [(d)] (e) of this section. No resident shall be
246 involuntarily transferred or discharged from a facility if such transfer or

247 discharge presents imminent danger of death.

248 (c) The facility shall be responsible for assisting the resident in finding
249 appropriate placement. A discharge plan, prepared by the facility,
250 which indicates the resident's individual needs shall accompany the
251 patient.

252 (d) No resident shall be involuntarily transferred or discharged from
253 a facility to any housing where the health or safety needs of the resident
254 cannot be met in accordance with section 47a-7 or by an available and
255 willing designated caregiver pursuant to section 19a-535c.

256 [(d)] (e) (1) For transfers or discharges effected on or after October 1,
257 1989, a resident or his legally liable relative, guardian or conservator
258 who has been notified by a facility, pursuant to subsection (b) of this
259 section, that he will be transferred or discharged from the facility may
260 appeal such transfer or discharge to the Commissioner of Public Health
261 by filing a request for a hearing with the commissioner within ten days
262 of receipt of such notice. Upon receipt of any such request, the
263 commissioner or his designee shall hold a hearing to determine whether
264 the transfer or discharge is being effected in accordance with this
265 section. Such a hearing shall be held within seven business days of
266 receipt of such request and a determination made by the commissioner
267 or his designee within twenty days of the termination of the hearing.
268 The hearing shall be conducted in accordance with chapter 54.

269 (2) In an emergency the facility may request that the commissioner
270 make a determination as to the need for an immediate transfer or
271 discharge of a resident. Before making such a determination, the
272 commissioner shall notify the resident and, if known, his legally liable
273 relative, guardian or conservator. The commissioner shall issue such a
274 determination no later than seven days after receipt of the request for
275 such determination. If, as a result of such a request, the commissioner or
276 his designee determines that a failure to effect an immediate transfer or
277 discharge would endanger the health, safety or welfare of the resident
278 or other residents, the commissioner or his designee shall order the

279 immediate transfer or discharge of the resident from the facility. A
280 hearing shall be held in accordance with the requirements of
281 subdivision (1) of this subsection within seven business days of the
282 issuance of any determination issued pursuant to this subdivision.

283 (3) Any involuntary transfer or discharge shall be stayed pending a
284 determination by the commissioner or his designee. Notwithstanding
285 any provision of the general statutes, the determination of the
286 commissioner or his designee after a hearing shall be final and binding
287 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 Purpose:

To prohibit nursing homes and residential care homes from discharging residents to temporary or unstable housing situations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]