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Rice Elder Law has been assisting clients with their Estate Planning and Elder Law needs since 1992. Both Nancy and Pamela have been Certified as Elder Law Attorneys (CELA) by the National Elder Law Foundation. The firm maintains offices in Atlantic County (Linwood) and Camden County (Cherry Hill). Rice Elder Law can answer your questions and concerns – just call 609-398-3447.

8 Things To Know When Your Loved One Is About To Be Discharged From Rehab

Your loved one (let's say Mom) has fallen or suffered a stroke and is rushed to the emergency room. After being admitted to the hospital for at least 3 days (not just "under observation" – this distinction is important), Mom is discharged from the hospital to a skilled nursing facility center for rehabilitation. After participating in rehabilitation therapy for about 17 days, the social worker tells you that your Mom's improvement has "plateaued" and they will be discharging her in 3 days. You panic because you are certain that Mom is unable to care for herself at home and she cannot afford to pay in-home caregivers, but you assume that the social worker has already explored all possible options for Mom so you have no choice but to go along with the discharge plans.

Remember, the social worker is not paid by the facility to be an advocate for Mom. Before accepting what you are told about discharge options, you should know the truth about the following statements commonly made by skilled nursing facilities:

1. "Medicare will cover only 20 days of rehabilitation." Medicare will cover up to 20 days of rehabilitation in full, and up to another 80 days with a coinsurance. For 2020, the coinsurance is \$176 per day, some or all of which may be covered by supplemental insurance ("Medigap"). It may be helpful to remind the facility that Mom has supplemental insurance so they are sure to be paid in full for any Medicare-covered rehabilitation. Remember, 100 days!!

2. "Your Mom's improvement has plateaued." In 2013, the U.S. Supreme Court clarified that "plateaued" improvement has never been the standard for the end of Medicare-covered rehabilitation. Instead, skilled nursing services are covered when necessary to maintain the patient's current condition or prevent/slow further deterioration. This is helpful when arguing for additional rehabilitation days.

3. "You didn't tell us when she was admitted that she would be staying." The Federal Nursing Home Reform Act (FNHRA) prohibits involuntary transfer or discharge of a nursing home resident (including rehabilitation) except for 6 specific reasons:

- Necessary to meet resident's welfare;
- Resident no longer needs skilled care;
- Resident endangers safety of others;
- Resident endangers health of others;
- Nonpayment (or failure to procure Medicaid); and
- Facility closes.

4. "We do not have any long-term care beds available." This is NOT one of the allowable reasons for discharge. Mom is in a bed currently, and when a long-term care bed opens, they can move her.

5. "You have to fill out an application for admission to long-term care." This is not an allowable reason for discharge under the FNHRA and there is no requirement under law that an application be completed or an agreement be signed. In fact, this is usually nothing more than an attempt by the facility to get Mom to waive her rights (or worse, get one of her children on the hook for payment of her fees).

6. "You have to sign a respite care agreement." Same as #5, but this makes it easier for the facility to discharge because in a respite care agreement, Mom agrees to stay no longer than the stated short-term period (maybe 90 days).

7. "We do not accept Medicaid-pending." A nursing home is not required to accept any new resident from outside of the facility, but they are not permitted to discharge a resident who has already entered the facility, whether on private-pay, Medicare rehabilitation, Medicaid-pending, or otherwise. In fact, Medicaid beneficiaries (including Medicaid-pending) have heightened protections against involuntary discharge under New Jersey law.

8. "Who will be paying while Medicaid is pending?" While a nursing home resident is awaiting Medicaid approval (which could take months or even close to a year), the resident is responsible for paying her income to the facility, subject to some limitations. Family cannot be held responsible to pay the balance during the Medicaid approval process.

Now that you know Mom's basic rights when it comes to nursing home discharge, what do you do when the social worker insists on setting up a plan for discharge? Say NO and contact us or another Certified Elder Law Attorney right away! Once Mom returns home, it may be extremely difficult to get her admitted back into the facility (or any facility). You can also contact the New Jersey Office of the Long-Term Care Ombudsman.



**Nancy Rice and Pamela Quattrone
can answer your questions and concerns,
call 609-398-3447.**

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