

# Nursing home: **INVOLUNTARY DISCHARGES AND TRANSFERS FROM NURSING HOMES**



## Who We Are

Established in 1911, Maryland Legal Aid is a statewide private, nonprofit law firm that provides free, civil legal services to low-income and vulnerable people to address their most fundamental legal problems. From our 12 offices throughout the state, we help our clients preserve and access safe and affordable housing, maintain and regain custody of their children, and be safe from domestic violence. Maryland Legal Aid increases our clients' economic security by defending against consumer debt, including foreclosures and tax sales, removing barriers to employment, and accessing critical income supports such as unemployment, food stamps and other vital public benefits. Through special projects, we represent elder adults, nursing home residents, migrant farm workers, and children in alleged abuse and neglect cases. In its advocacy, Maryland Legal Aid seeks systemic change through impact litigation, in our advocacy, and by storytelling.

## Know Your Rights!

This brochure is for Maryland residents and contains general information about your rights, but is not meant to be legal advice. Every effort is made to keep this information current. However, the law sometimes changes. If you need information about your specific situation, or if you have a pending legal case, you should seek counsel from Maryland Legal Aid or another legal resource.

## What rights do Nursing Home Residents have?

You have many rights as a nursing home resident under both Maryland and federal law. Nursing homes must give you a copy of the "Residents' Bill of Rights" upon admission. Nursing homes also must post these rights in the nursing home. You can get a copy of your rights at: [mhcc.maryland.gov/consumerinfo/longtermcare/documents/resident\\_rights.pdf](http://mhcc.maryland.gov/consumerinfo/longtermcare/documents/resident_rights.pdf).

## Your rights include:

- The right to receive services with reasonable accommodations;
- The right to participate in planning care and treatment, including the right to consent or refuse treatment and the right to choose your attending physician;
- The right to examine your records upon request, generally within 24 hours;
- The right to be free from physical, verbal, sexual, and mental abuse;
- The right to receive or decline visits from friends, family, advocates, ombudsmen, social services providers as you chose, including the right to meet with visitors privately;
- The right to reasonable access to the private use of a telephone;
- The right to send and receive private mail
- The right to be treated with dignity and to make independent decisions choices;
- The right to complain about problems;
- The right to a safe and secure discharge

**This brochure explains your rights when a nursing home wants to transfer or discharge you.**

## **Can a nursing home transfer or discharge me?**

Nursing homes can only discharge or transfer residents for very limited reasons. If you do not agree to leave, it is called an “involuntary transfer” or “involuntary discharge.” Federal and state laws have strict rules about involuntary transfers and discharges.

In most cases, there are only five reasons a nursing home can involuntarily transfer or discharge you:

1. A transfer or discharge is necessary for your welfare and your needs cannot be met by the nursing home. Your doctor must write in your medical chart why the discharge or transfer is necessary.
2. The transfer or discharge is appropriate because your health has improved sufficiently so that you no longer need the services provided by the facility. Your doctor must write in your medical chart why the discharge or transfer is necessary.
3. You are endangering the health or safety of an individual in the nursing home. A doctor must write in your medical chart why the discharge or transfer is necessary.
4. You have failed to pay or have others pay the nursing home for your stay. The facility must have given you reasonable and appropriate notice of the amount you owe.

5. The facility has stopped operating or, if you are a Medicare or Medicaid recipient, the facility has been decertified or withdrawn from the Medicare or Medicaid program.

## **Do I receive advance notice of a discharge or transfer?**

The nursing home must give you a written notice at least 30 days before the proposed transfer or discharge date. A continuing care retirement community must provide 60 days notice. The notice must also be sent to the local Long-Term Care Ombudsman, the Maryland Department of Health, and any of your relatives who have acted as your representative.

## **What does the notice of discharge or transfer have to say?**

The notice must have all the items listed below:

- Each reason for the proposed involuntary discharge or transfer;
- Your right to request a hearing, and how to request a hearing;
- The name, address, and phone number of the Maryland Department of Aging and Long-Term Care Ombudsman;
- Your right to consult with a lawyer;
- The name, address and phone number of Maryland Legal Aid, the Older Americans Act Senior Legal Assistance Programs, and other agencies. If you are a person with developmental disabilities or mental illness, the address and phone number of Disability Rights Maryland;
- The date the proposed transfer or discharge will take place; and
- Your rights to a safe and secure transfer or discharge.

If the notice does not contain all the information above, or if it is not sent properly to everyone who should get the notice, you can challenge the discharge, based on the validity of the notice.

## **Are there any reasons why the nursing home doesn't have to give me notice?**

A facility must provide a written notice as soon as practicable if there is an emergency and your health or safety or the health and safety of other residents would be placed in imminent and serious jeopardy if you were not transferred or discharged from the facility as soon as possible OR, you have been at the nursing home for less than 30 days.

## **How can I stop the nursing home from discharging or transferring me?**

There are several ways that you can try to stop the transfer or discharge. As soon as you get the notice of discharge you should:

- Request mediation and a hearing. You have 30 days from the date you receive the notice of discharge or transfer to ask for mediation and a hearing. This is also called filing an appeal. Your Notice of Discharge tells you how to file the appeal with the Office of Administrative Hearings. If you file an appeal within 30 days, the nursing home cannot transfer or discharge you until an Administrative Law Judge makes a final decision at your hearing.
- Contact the Ombudsman. You should call the Long-Term Care Ombudsman for assistance. The Ombudsman, a free advocate

for nursing home residents, tries to resolve their problems. They also report serious cases to the appropriate authorities and may refer you to an attorney. The Ombudsman makes regular visits to nursing homes. To find your local Ombudsman, call the statewide office at 1-800-243-3425, or go to [www.aging.maryland.gov/Pages/Ombudsman.aspx](http://www.aging.maryland.gov/Pages/Ombudsman.aspx)

### **What can I do if the nursing home is not following the proper procedure for transfer or discharge?**

- File a complaint with the Maryland Office of Health Care Quality (OHCQ). OHCQ investigates complaints about nursing homes. If you file a complaint, OHCQ must investigate your matter promptly. You can file a complaint with OHCQ by calling 1-877-402-8219 or online at [health.maryland.gov/ohcq/](http://health.maryland.gov/ohcq/)
- File a lawsuit requesting an injunction. You may file a lawsuit against the nursing home in the county Circuit Court asking for an “injunction” if you believe that a transfer or discharge violates the law. An injunction is a court order telling the nursing home not to transfer or discharge you. Your agent or your attorney can also ask for a copy of the court order. If you want to file a lawsuit, you should definitely talk to a lawyer as soon as possible, as this option can be complicated.

## What happens if I am discharged or transferred?

You may only be transferred or discharged to a safe and secure place that can meet your needs. It doesn't matter what the reason is for the transfer or discharge. It doesn't matter how long you were in the nursing home. It doesn't matter if it is an emergency. Your transfer or discharge must be safe and secure. The nursing home must provide you with all of the following items:

- Comprehensive medical assessment;
- Post-discharge plan of care;
- Written confirmation from your attending physician that the transfer or discharge complies with the post-discharge plan and that it will not harm your medical condition;
- Statement of medical evaluation;
- List of current medications;
- At least a three-day supply of your current medications;
- The information necessary to assist you in getting additional prescriptions for necessary medication;
- A written statement of the date and time you will be discharged, how you will be discharged, and where you will be sent. If you don't receive this information, you can challenge the transfer or discharge.

## Where can I get legal help?

If you are facing an involuntary transfer or discharge you should contact Maryland Legal Aid's Long-Term Care Assistance Project, the Long-Term Care Ombudsman in your county, or a private attorney. The Lawyer Referral Service in your county can help you to find a private attorney.

## Contact the Long-Term Care Ombudsman

The Long-Term Care Ombudsman (Ombudsman) is a free advocate for nursing home residents who tries to resolve their issues. The Ombudsman assists with voicing complaints to nursing home staff and to the Office of Health Care Quality and can help you find an attorney or other resource to help. The Ombudsman keeps information confidential and will not act without your permission. The Ombudsman makes regular visits to nursing homes. To find your local Ombudsman, call the statewide office at 1-800-243-3425, or go to [www.aging.maryland.gov/Pages/Ombudsman.aspx](http://www.aging.maryland.gov/Pages/Ombudsman.aspx).

## **File a Complaint with the Maryland Office of Health Care**

OHCQ investigates complaints about assisted living facilities. If you file a complaint, OHCQ must investigate your matter. You can contact OHCQ at 1-877-402-8221, file a complaint online or get the complaint form at: <https://health.maryland.gov/ohcq/Pages/Complaints>.

## **Report Abuse or Fraud**

If you want to report fraud, waste, or abuse, you can contact the Maryland Department of Health Office of the Inspector General Hotline at 1-866-770-7175 or at [health.maryland.gov/oig](https://health.maryland.gov/oig).

The Office of the Attorney General's Medicaid Fraud Unit also investigates neglect or abuse. You can contact the Medicaid Fraud Unit at 410-576-6521.

## **Contact an Attorney**

Maryland Legal Aid may be able to assist you, or you can contact an attorney. Contact the Maryland Legal Aid office serving your county. A list of those offices and the counties they serve is provided on the back of this brochure. The Lawyer Referral Service in your county can help you find a private attorney.

## **Maryland Legal Aid's Statewide Long-Term Care Assistance Project**

Maryland Legal Aid's Long-Term Care Assistance Project provides free legal help for low-income persons to get the long-term health care they need in the setting of their choice, whether that be at home, in the community through assisted living, or in a nursing home. You can contact the Long-Term Care Assistance project by calling 1-866-635-2948 or go to [www.mdlab.org](http://www.mdlab.org).

## **Lawyer Referral Service**

Contact the Maryland State Bar Association at 1-800-492-1964 or go to [www.msba.org/public/lawyer-referral.aspx](http://www.msba.org/public/lawyer-referral.aspx)

## **Resources for more information about Nursing Home residents' rights and Nursing Homes, generally:**

- National Consumer Voice for Quality Long-Term Care: [www.theconsumervoice.org](http://www.theconsumervoice.org)
- AARP: <https://www.aarp.org/>
- <http://www.medicareadvocacy.org/>



# Maryland Legal Aid Offices

**Centralized Intake:** 1-888-465-2468  
is now serving all jurisdictions:

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## Offices

### **Allegany/Garrett**

138 Baltimore Street  
Suite 204  
Cumberland, MD 21502

### **Anne Arundel/Howard**

2024 West Street  
Suite 204  
Annapolis, MD 21401  
3451 Court House Drive  
2nd Floor  
Ellicott City, MD 21043

### **Baltimore City**

500 E. Lexington Street  
Baltimore, MD 21202

### **Baltimore County**

215 Washington Avenue  
Suite 305  
Towson, MD 21204

### **Cecil/Harford**

103 S. Hickory Avenue  
Bel Air, MD 21014

### **Lower Eastern Shore Dorchester, Somerset, Wicomico, Worcester**

101 Broad Street,  
Salisbury, MD 21801

### **Midwestern Maryland Carroll, Frederick, Washington**

22 S. Market Street  
Suite 11  
Frederick, MD 21701

### **Montgomery County**

600 Jefferson Plaza  
Suite 430  
Rockville, MD 20852

### **Prince George's County**

8401 Corporate Drive  
Suite 200  
Landover, MD 20785

### **Southern Maryland Calvert, Charles, St. Mary's**

15045 Burnt Store Road  
Hughesville, MD 20637

### **Upper Eastern Shore Caroline, Kent, Queen Anne's, Talbot**

106 N. Washington Street  
Suite 101  
Easton, MD 21601

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**TTY Users:** Call Maryland Relay, Dial 7-1-1

**[www.mdlab.org](http://www.mdlab.org)**

For more information

**[www.peoples-law.org](http://www.peoples-law.org)**

For self-help legal information and  
community resources

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