

Ask An Attorney

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I am an attending physician at a nursing home. What if a resident is unhappy that a safe discharge plan cannot be developed by our interdisciplinary team and wants to return home anyway?

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The nursing home should inform the resident, and/or their proxy, of the resident's right to refuse care and leave the nursing home against medical advice (AMA). The resident must also be informed that the nursing home will notify Adult Protective Services when a resident discharges themselves AMA. The nursing home's staff should document such conversations in the resident's medical chart.

Often times, although a resident's goal upon admission to a nursing home is to return home, the resident's health care needs prevent a safe discharge plan to do so. Upon admission to the nursing home, the interdisciplinary team, which includes medical, nursing, social work, and therapy, must make assessments as to the resident's care needs. This may include the development of a discharge plan for the resident to be returned safely home, if appropriate. New York law requires a nursing home to encourage and assist in the fullest possible exercise of a resident's civil liberties, including the right to independent personal decisions and knowledge of available choices. Therefore, the nursing home must encourage the resident to participate in care planning meetings, which may include discharge planning.

One of a resident's options is the right to refuse medical care and sign out of a nursing home, at any time, against medical advice. New York Public Health Law provides that "[e]very patient shall have the right . . . to refuse medication and treatment after being fully informed of and understanding the consequences of such actions." This includes refusing personal care, administration of medication, and other services.

Frequently, a resident's health care needs prevent them from being safely discharged back to their home. State and federal law requires a nursing home to assess the home care that the resident will be discharged into to ensure that the environment is safe and not risk a deterioration of the resident's quality of life. These rules and regulations also require the nursing home to plan for the safe and orderly discharge of the resident to an appropriate community housing option with the services necessary for community reintegration, and which provides for the safety and well being of the resident.

If a resident no longer requires the level of care that a nursing home provides but is in need of assistance in their home, the nursing home is required to coordinate the discharge with community services such as home care agencies. If the home care agencies determine that, after assessing the resident and the resident's family, the necessary services cannot be provided, the nursing home must not discharge the patient home unless the resident's family can ensure that they are able to provide the required care and assistance.

All of these requirements must be considered when the attending physician signs off on a resident's discharge plan. The physician should also ensure that the resident has been informed of the right to refuse the nursing home's care and treatment, and to leave the nursing home against medical advice.

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