

Involuntary Discharge

New Jersey Assisted Living Attorneys Guiding Safe Involuntary Discharge

In New Jersey, assisted living facilities are increasingly facing a circumstance where, for one reason or another, they cannot meet the level of care required for the resident or the resident poses a danger to him/herself or others in the facility. New Jersey, like most states, requires a safe discharge, following adequate written notice to the resident or the responsible party (absent emergent circumstances). New Jersey regulations guide the involuntary discharge of residents. Generally speaking, if a resident's condition meets one or more of the following conditions, he or she may be involuntarily discharged from the assisted living facility:

1. The resident requires 24-hour, seven day a week nursing supervision;
2. The resident is bedridden for more than 14 consecutive days;
3. The resident is consistently and totally dependent in four or more of the following activities of daily living: dressing, bathing, toilet use, transfer, locomotion, bed mobility, and eating;
4. The resident has a cognitive decline severe enough to prevent the making of simple decisions regarding activities such as bathing, dressing and eating and cannot respond appropriately to cueing and simple directions;
5. The resident requires treatment of a stage three or four pressure sore or multiple stage two pressure sores. However, a resident who requires treatment of a single stage two pressure sore shall be retained and a plan of care developed and implemented to stabilize the pressure sore and the condition which caused it;
6. The resident requires more than "assistance with transfer";
7. The resident is a danger to self or others; or
8. The resident has a medically unstable condition and/or has special health problems, and a regimen of therapy cannot be appropriately developed and implemented in the assisted living environment.

The regulations do not mandate the involuntary discharge of residents meeting any of the above criteria. In order to lawfully effectuate the involuntary discharge, the facility must give thirty (30) days written notice and advise the resident/responsible party of his or her right to appeal.

In a circumstance where the resident is incapacitated or the responsible party (agent/attorney-in-fact) refuses to transfer the resident to an appropriate care setting, the facility can file a petition seeking the appointment of a guardian. If the resident faces the risk of substantial harm, the court may appoint a temporary guardian to make medical decisions on behalf of the resident. If there are no suitable family members, the New Jersey Office of the Public Guardian may be appointed by the court to act as the guardian.