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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 9, 2023
Subject: HB 2246: Establishing requirements for the involuntary discharge or transfer of a resident in an adult residential care facility, the right to appeal such discharge or transfer and a process for such appeal.

House bill 2246 proposes a process to involuntarily transfer or discharge a resident from an adult care facility and a process to appeal such transfer or discharge. The bill defines “adult care facility.”

The bill proposes that an administrator of an adult residential care facility shall not involuntarily transfer or discharge a resident unless: (1) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the current facility; (2) the health or safety of others are endangered; (3) the resident has failed, after reasonable and appropriate notice, to pay; or (4) the facility ceases to operate.

The administrator shall provide a written notice for the transfer or discharge at least 30 days before such transfer or discharge, unless the resident is a danger to others or has an urgent medical need. The administrator is required to develop a discharge plan before a discharge.

If a resident receives a notice in violation of section 1, the resident or their representative may appeal the involuntary transfer or discharge to the secretary and file such appeal with the office of administrative hearings. A hearing shall be held within 30 days after receiving the notice of appeal. When a resident files an appeal, the resident shall remain or be permitted to return and resume residence at the facility when the appeal is pending.

Section 2 requires that the secretary for aging and disability services to make available a 30-day involuntary transfer or discharge notice form. The facilities are not required to use that form, but any form they use must include certain items, including the reason, evidence supporting the reason, names and contact information, the effective date of the transfer or discharge, information about appealing and a copy of the notice of appeal form. The notice of an appeal form shall include name and contact information of the resident and person appealing the transfer or discharge, the facility, the date of the notice of transfer or discharge and whether the person appealing would like to request an informal hearing.

Section 3 requires an administrator, before issuing the notice of the transfer or discharge, to notify the resident of the transfer or discharge, hold a meeting to discuss and resolve the reason for the transfer or discharge, notify the resident that others may join such meeting, and record the reason for the transfer or discharge in the clinical record.

Section 4 requires the administrator to deliver the notice of transfer or discharge to the resident in person, in addition to the resident's representative, the state long-term care ombudsman and place in the resident's record.

Section 5 allows for an administrative hearing when a resident receives a notice that is not the result of a facility having its licensed revoked or not renewed by the secretary. The resident or their representative may appeal the transfer or discharge by filing a notice of appeal with the office of administrative hearings within 15 days of the date on the notice. If a resident is incapacitated and has no representative, the long-term care ombudsman may file such an appeal. Within 15 days of the receipt of the notice of appeal, the office shall hold a hearing. Then within 10 days of the hearing, the office shall issue a decision.

Section 6 outlines the process for an informal hearing, if requested by the resident, to resolve the transfer or discharge. Such conference shall be held after the notice of appeal is filed and before the hearing. If there is a resolution, there shall be no administrative hearing.

Section 7 requires an administrator to provide notice of an emergency transfer or discharge prior to or within the 48 hours of the transfer or discharge. The secretary for aging and disability services shall decide what constitutes an “emergency.” If the transfer or discharge is considered an emergency, sections 8 through 10 will apply to the notice and process of such transfer or discharge.

Section 8 requires the secretary to make available a form for an emergency transfer or discharge. The administrator shall provide an emergency transfer or discharge notice that includes a statement of the right to appeal, the procedure to appeal, and a copy of the appeal notice form. The section requires an appeal notice form to include the names of the resident or person appealing, reason for transfer or discharge, date of discharge and more.

Section 9 requires that before an emergency transfer or discharge notice is provided to be reviewed and approved by the secretary as an “emergency.” A resident may be removed before the review is conducted if needed.

Section 10 grants residents the right to appeal an emergency transfer or discharge. The resident or resident’s representative may appeal within 7 days of receiving the notice. Within 14 days of receipt of the appeal notice, the office of administrative hearings shall hold a hearing regarding the transfer or discharge. The office is required to issue a written decision within 5 business days after the hearing.