



Adult Care Facilities: Termination of Residence

There are 6 times an Adult Care Facility can terminate a resident's Admission/Residency Agreement¹:

1. The resident *requires continual medical or nursing care or supervision* which the adult care facility is not *licensed to provide*;
2. The resident's *behavior poses imminent risk of death or imminent risk of serious physical harm* to him/herself or anyone else;
3. The resident *failed to make timely payment* for all *authorized* charges, expenses and other assessments, if any, for services, including use and occupancy of the premises, materials, equipment and food which the *resident agreed to pay* pursuant to the resident's Admission/Services Agreement;
4. The resident *repeatedly behaves in a manner* which *directly impairs the well-being, care or safety* of the resident or other residents, or which *substantially interferes with the orderly operation of the facility*;
5. The facility has had its operating certificate limited, revoked or temporarily suspended, or the operator has voluntarily surrendered the operating certificate of the facility to the Department of Health;
6. A receiver has been appointed pursuant to the provisions of 461-f of the NYS Social Services Law, and is providing for the orderly transfer of all residents in the facility to other facilities or is making other provision for the residents' continued safety and care.

The resident must be provided with written notice 30 days prior to the termination date and the facility must use the Department of Health 30 Day Notice of Termination (enclosed, along with DOH Dear Administrator Letter). If the facility does not use the Department of Health form, the notice is invalid and a complaint should be filed with the Department of Health.

¹ NYS Social Services Law 461-g

Q1. The resident received written notice but wants to remain in the facility, what can the resident (or advocate) do?

A1. Ask questions and request a meeting. For example, if the reason for discharge is resident behavior and this behavior is new, ask why: was there a medication change, was there a change in routine? If the resident requires continual medical or nursing care or supervision which the facility is not licensed to provide, can the resident/family hire personal aides to provide the care? If the facility will not work with the resident/family, then refer to Q/A's 2 and 3.

Q2. Can the facility terminate the agreement without a safe discharge/transfer to another location?

A2. No. Every type of Adult Care Facility (Adult Home, Enriched Housing Program, and Assisted Living Residence) is required to provide case management services. This includes "assisting residents in need of alternative living arrangements to make and execute sound discharge or transfer plans."² If a resident has concerns that the facility is not assisting him/her in alternative living arrangements, the resident may file a complaint with the Dept. of Health: 1-866-893-6772, and/or contact the Long Term Care Ombudsman Program: 1-855-582-6769. The resident may also conduct his/her own research and contact other entities for assistance in finding alternative living arrangements such as NY Connects, Area Senior Services/Offices for the Aging, or a Geriatric Care Manager (<https://www.aginglifecare.org/>).

Q3. What if the resident disagrees with the notice and wants to contest the termination?

A3. The facility cannot unilaterally discharge the resident. In order to formally 'evict' (discharge) a resident who wants to remain in the facility, the facility is required to pursue a special proceeding to terminate the admission agreement in court. The special proceeding shall begin by petition and notice of petition. The notice of petition and petition shall be personally delivered to the resident and a copy mailed to the resident's next of kin and to the person designated in the admission agreement as the responsible party.

Q4: Can the Center for Elder Law & Justice represent the resident?

A4: Yes, we may be able to represent the resident during the special proceeding initiated by the facility to terminate the admission agreement. If a resident has been issued the 30 day Notice of Termination contact the Center for Elder Law & Justice intake: (716) 853-3087.

Q5: What happens if the resident goes to the hospital? To a nursing home?

A5: Unless the facility issues a written 30 day notice to terminate the admission agreement, the resident has the right to return to the facility. (Note- nonpayment is grounds for a facility to terminate the admission agreement.) If the termination notice is issued then the resident has the right to challenge the termination as outlined above. The resident should also review the admission agreement with the facility.

² See 18 NYCRR 487.7(g)(1)(ix)-Adult Homes; 18 NYCRR 488.7(e)(2)(ix)-Enriched Housing. Assisted Living Residences 'base license' is either "Adult Home" or "Enriched Housing."