



Adult Care Facility: Termination of Admission/Residency

Every resident in an Adult Care Facility, regardless of the facility ‘type’ (Adult Home, Enriched Housing Program, or Assisted Living Residence), has the right to receive a 30-Day Notice of Termination. The purpose of this guide is to provide an overview of the New York State legal requirements pertaining to when an Adult Care Facility moves to terminate a resident’s Admission/Residency.

There are only 6 reasons an Adult Care Facility can terminate a resident’s Admission/Residency Agreement:

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/Residency 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 above is for informational purposes only and does not constitute an attorney-client relationship, nor is it legal advice.

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

Frequent Questions and Answers

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

A. Adult Care Facilities can only admit and retain individuals for whom they are licensed to provide care. The written notice must state one of the 6 legal reasons why they are moving to terminate the residency agreement. If the reason is for #s 1, 2, or 4 as listed above then the resident should ask questions and schedule a meeting with the operator. The Long Term Care Ombudsman Program may be able to provide resident-centered advocacy at this 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 that would trigger the behavior?
 - When did this behavior begin?
- If the resident requires continual medical or nursing care or supervision which the facility is not licensed to provide:
 - Does the resident's physician agree/document that the resident needs such care?
 - Can the resident/family hire personal aides to provide the additional care?

If the resident wishes to remain in the facility, then the resident must inform the facility he/she is not in agreement with the notice of termination. At that point, it is the facility's responsibility to initiate a special court proceeding in accordance with NYS Social Services Law Section 461-h.



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

A. The facility cannot unilaterally discharge the resident. If the resident objects to the termination notice, the resident must notify the facility Operator or Administrator of the objection prior to the proposed discharge date.

If the resident does not leave voluntarily, the Operator is required to start a special court proceeding. In addition, the resident cannot be discharged against his/her will unless the court rules in the favor of the operator.

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

A. 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.

If a resident has concerns that the facility is not assisting him/her in finding alternative living arrangements, a long term care ombudsman can advocate on behalf of the resident and the resident may file a complaint with the NYS Department of Health.

The resident may do his/her own research and contact other entities for assistance in finding alternative living arrangements:

- NY Connects:
 - Cattaraugus: (800) 462-2901
 - Chautauqua: (716) 753-4582
 - Erie: (716) 858-8526
 - Niagara: (716) 438-3030
- Senior Services/Offices for the Aging:
 - Cattaraugus: (716) 373-8032
 - Chautauqua: (716) 753-4471
 - Erie: (716) 858-8526
 - Niagara: (716) 438-4020
- Geriatric Care Manager: <https://www.aginglifecare.org/>



Q: What happens if the resident goes to the hospital? To a nursing home for short-term rehabilitation?

A: Unless the facility issues a written 30 day notice to terminate the admission agreement, the resident has the right to return to the facility once they are medically appropriate. Once a termination notice is issued then the resident has the right to challenge the termination as outlined above.

Nonpayment is grounds for a facility to terminate the admission/residency agreement. The resident should review his/her admission agreement for terms pertaining to absences for hospitalization or rehabilitation at a nursing home.

Q: What happens if the resident is no longer able to pay the Adult Care Facility?

A: While the majority of Adult Care Facilities are private pay, some facilities may agree to accept a lesser payment. If the resident's funds are being depleted he/she may want to discuss the issue with the operator in advance to determine whether an agreement may be worked out.

If the resident is no longer able to afford to live in the Adult Care Facility, the facility must assist the resident to find an alternative living arrangement that is safe.

Q: How is the 30-Day Notice of Termination issued?

A: If the resident does not live in a Special Needs Assisted Living Residence, or does not have a court appointed guardian of the person, the operator is to directly issue the 30-Day Notice of Termination to the resident at the facility. If the resident has been transferred for treatment, notice must be given to the resident at that location. The resident's representative must also receive a copy from the facility by certified mail.

Notice must be served to the resident personally. It is not acceptable if the notice is served in another manner such as: affixing the notice to the door of the resident's room, delivery by mail, or deliver to another person on behalf of the resident.



Q: What if the resident lives in a Special Needs Assisted Living Residence-how is the 30-Day Notice issued?

A: If the resident lives in a Special Needs Assisted Living Residence, or has otherwise been declared incompetent and has had a guardian appointed, the Operator is to deliver the notice to the resident's representative or next of kin by certified mail, with a copy to the resident by certified mail.

Q: What is a long term care ombudsman and how do I contact an ombudsman?

A: The Ombudsman Program is an advocate and resource for older adults and persons with disabilities who live in nursing homes, assisted living, and other licensed adult care homes. Ombudsmen help residents understand and exercise their rights to good care in an environment that promotes and protects their dignity and quality of life.

The Ombudsman Program advocates for residents by investigating and resolving complaints made by or on behalf of residents; promoting the development of resident and family councils; and informing governmental agencies, providers and the general public about issues and concerns impacting residents of long-term care facilities.

To request Ombudsman Program assistance, call (716) 817-9222 (Cattaraugus, Chautauqua, Erie, Niagara Counties) 1-855-582-6769 or visit <https://ltombudsman.ny.gov/> for additional information.

Q: How do I contact the Department of Health to file a complaint?

A: The Department of Health has a centralized complaint intake program for Adult Care Facilities. A complaint is made by calling 1-866-893-6772. The intake hours are 8:30am to 4:45pm Monday through Friday. Complaints made after hours or on the weekend may be left on the voicemail system and will be addressed within 1-2 business days.

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

A: The Center for Elder Law & Justice (CELJ) 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 CELJ for case intake: (716) 853-3087.

30 Day Notice of Termination

Facility Name: _____ **Operating Certificate Number:** _____

To: _____
Resident's Name/Facility Address _____ Room Number _____

You are hereby notified on _____ that _____ has
Date Facility Operator/Administrator

decided to terminate your Admission/Residency Agreement signed on _____
Date

and to discharge you on _____ .
Date

The decision to terminate is in accordance with NYS Adult Care Facility Regulations found in 18 NYCRR Parts 487.5(f) and 488.5(e) **and explained in greater detail below.** The reason(s) for this action complies with your Admission/Residency Agreement and is as follows (check all that apply):

- The resident requires continual medical or nursing care or supervision which the adult care facility is not licensed to provide;
- The resident's behavior poses imminent risk of death or imminent risk of serious physical harm to him/herself or anyone else;
- 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/Residency Agreement;
- 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;
- This 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;
- A receiver has been appointed pursuant to the provisions of section 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;

Detailed Explanation: _____

You have the right to object to this action pursuant to section 461-h of the NYS Social Services Law. If you object, you must notify the Operator or Administrator of your objection before the proposed discharge date. If you do not leave voluntarily, the operator is required to start a special court proceeding and abide by the determination of the court. You will not be discharged against your will unless the court rules in favor of the operator.

If the special court proceeding is instituted, you will receive notice of the hearing **at least five (5) days before its scheduled date.**

You have the right to present your reason(s) to the court why this Admission/Residency Agreement termination and discharge should not take place. This can be accomplished either in writing before the date of hearing or orally at the hearing.

You are encouraged to discuss this with and be represented by a lawyer or advocate. A list of legal and advocacy services is attached to this notice.

A copy of this notice has also been provided and/or sent to:

Yourself (the resident)

Your next of kin, if known:

Name

Date

Person designated in your Admission/Residency Agreement as the responsible party other than your next of kin:

Name

Date

New York State Department of Health ACF/Assisted Living Regional Office within 5 days:

Regional Office

Date

A copy of the list of legal and advocacy services is attached to this notice.

Operator/Administrator Signature

Date

Resident's Signature

Date

Resident's Representative's Signature

Date