

April 13, 2020

Dr. Rachel Levine, Secretary  
Pennsylvania Department of Health  
Health and Welfare Building  
8th Floor West  
625 Forster Street  
Harrisburg, PA 17120

RE: Moratorium on Involuntary Discharges Request

Sent via E-mail: [rlevine@pa.gov](mailto:rlevine@pa.gov)

Dear Secretary Levine,

As advocates for nursing home residents throughout Pennsylvania, we are writing to urgently request an immediate moratorium on involuntary discharges and transfers during the COVID-19 state of emergency, with the exception of CMS' waiver to rights for when the purpose is to cohort residents during the pandemic. Given that nursing home residents are particularly vulnerable to the coronavirus, they should not be subject to involuntary discharge or transfer for the duration of the emergency. This is necessary to protect the health and safety of nursing home residents and the community at large, as well as to protect their due process rights.

The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) has helped a number of nursing homes residents who were threatened with involuntary discharge and did not have a safe place to go. A *Washington Post* article mentioned a case of a nursing home resident in Pennsylvania who left the facility for dialysis, got a fever and was told not to return.<sup>1</sup> Community Legal Services currently has several clients whose nursing homes were attempting to discharge them to homeless shelters. Discharging nursing home residents to shelters is inappropriate at any time, since these individuals are likely to have care needs which cannot be met in a shelter, but an involuntary discharge to a shelter should be unthinkable during an infectious disease pandemic. Conditions in a shelter, where people are in close contact and new people may be entering on a regular basis, create an extreme risk of COVID-19 exposure. And nursing home residents, who by definition tend to be elderly people with underlying health conditions, are particularly at risk of severe illness or death if they become infected.

It is well documented that the involuntary transfer or discharge of a nursing home resident can be unsafe and a traumatic experience leading to significant ramifications on their health especially for those with cognitive impairment. This problem occurs for short term nursing home/rehab residents and long-term residents whom facilities may be eager to discharge. Involuntary transfers to other nursing facilities or discharges to other locations also create a risk of community spread, especially considering the increasing prevalence of COVID-19 in nursing facilities. For the same reasons that visitors have been prohibited from visiting nursing facilities, residents should not be involuntarily transferred between facilities.

A moratorium is particularly necessary because protocols implemented to ensure resident safety and care make it impossible for the residents' rights and due process protections guaranteed by federal and state law to be meaningfully honored. For example, neither the Long-Term Care Ombudsman Program nor Disability Rights Pennsylvania, Pennsylvania's Protection and Advocacy agency, are able to visit residents to make them aware of their rights or provide in-person assistance with this complex process.

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<sup>1</sup> Oldham, K. M. (2020, March 30). [Coronavirus limbo: Seniors need to leave hospitals but some nursing homes won't let them return](#). *Washington Post*.

Family members are also unable to visit residents to provide assistance, and attorneys who would represent residents in an appeal are unable to visit their clients in-person. Reaching nursing home residents by telephone is typically difficult and some cannot hear well on the phone. Hearings cannot be held in person, and telephonic hearings may make it difficult for some residents to meaningfully participate.

For the same reasons the Department of Health (DOH) issued interim guidance<sup>2</sup> to nursing facilities to follow, recognizing the need for critical measures to help control and prevent the spread of COVID-19, DOH should require nursing homes to suspend all involuntary transfers and discharges. In circumstances when a transfer to a higher level of care is medically necessary, DOH should review and approve each case to ensure that the medical necessity of the transfer outweighs the potential risk. Since this is not a request to stop all discharges, a moratorium on involuntary discharges will not impede upon DOH's goal to create beds for hospital discharges but rather it is another critical measure needed to contain the spread of the virus. In addition to the risk of community spread, residents are especially vulnerable during the COVID-19 emergency to becoming homeless, being placed in shelters, or requiring preventable hospitalizations due to not having access to adequate care after discharge.

With the exception of CMS' waiver to rights for when the purpose is to cohort residents during the pandemic, we urge you to **impose a moratorium on all involuntary nursing home discharges and transfers immediately**, to protect the health and safety of nursing home residents and the public. While we appreciate that when DOH is made aware of involuntary discharges it attempts to dissuade facilities from proceeding, the protocol does not go far enough to protect residents or public safety, as many cases will not be identified, especially since facilities do not always issue a 30 day notice as legally required.

Thank you for your efforts and leadership to ensure the health and safety of Pennsylvanians under the most challenging circumstances. We hope you will agree to take additional measures to protect this vulnerable population. We would appreciate the opportunity to discuss this important matter with you or your staff and will contact your office in the next week concerning this. Thank you in advance for your attention to this urgent matter.

Sincerely,

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<sup>2</sup> Pennsylvania Department of Health [Interim Guidance for Nursing Facilities During COVID-19 \(3/18/20\)](#)

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