

# HOSPITAL ASSESSMENTS FOR RESIDENTS OF LONG-TERM CARE HOMES

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At the Advocacy Centre for the Elderly, we often get calls about the rules regarding resident hospitalizations and the return to long-term care homes. This article will attempt to answer some of the most frequent questions.

- 1. The long-term care home wants to send my father to hospital on a "Form 1" because he assaulted another resident. He is incapable of making treatment decisions and I am his substitute decision-maker. Can I stop the home?**

No. A Form 1 is an application made by a physician for a 72 hour psychiatric assessment of your father. It does not require either your father's consent or your consent, as his substitute decision-maker.

The Form 1 authorizes anyone to transport the person to a psychiatric facility within seven days of the Form being signed by the physician. The physician has to personally examine the patient and determine that they meet the requirements under section 15 of the *Mental Health Act*. Once the person is taken to the psychiatric facility, the hospital may detain the person for up to 72 hours. The person must be advised in writing that they have the right to retain and instruct a lawyer; however, there is no right to a hearing before the Consent and Capacity Board.

It is very difficult to interfere with a Form 1 given the short time-frame involved. However, if there is no basis for the Form 1, the hospital emergency room physician will often return the person to the home immediately after examination.

An improperly completed Form 1 can also be the basis for a complaint to the College of Physicians and Surgeons of Ontario, a prosecution under the *Mental Health Act* or an action for wrongful imprisonment if, for example, the physician who signed the document did not personally examine the person or they lied on the Form 1.

It is also possible to bring an application for *habeus corpus* to have a person released from the hospital immediately; however, given the short notice frame of the detention under the Form 1, this rarely occurs.

At the end of the 72 hours, one of the following **must** occur: (1) the person must be released from the hospital if they do not require treatment; (2) the person shall be admitted as an informal or voluntary patient; or (3) the person shall be admitted as an involuntary patient (Form 3).

If the person stays in hospital, they are considered to be a psychiatric patient and they have all of the rights of a psychiatric patient. The person must be given rights advice by a rights adviser if they are involuntarily detained, found incapable for treatment of a mental disorder or found incapable of making property decisions. As well, if the person is discharged from the long-term care home and the hospital deems them to be “alternative level of care” or “ALC,” the hospital cannot charge the chronic care co-payment since this is not authorized under the *Health Insurance Act*.

**2. Can the long-term care home refuse to allow my father to return to the long-term care home if he goes to hospital under the *Mental Health Act*?**

No. The long-term care home cannot refuse to allow your father to return to the home simply because he was sent to the hospital pursuant to the *Mental Health Act*.

**3. If my father is sent to hospital by the long-term care home, when can the home discharge him?**

The *Nursing Homes Act* is very strict with respect to when a person can be discharged from a long-term care home. Those requirements are as follows:

- (i) The home **shall** discharge the resident if they exceed legislated absence periods as set out in the regulations (see Question #5 below).
- (ii) The home **may** discharge the resident if: (a) the home cannot provide a sufficiently secure environment to ensure the safety of the resident or the safety of persons who come into contact with the resident, **and** (b) other arrangements are made to provide the accommodation, care and secure environment required by the resident.
- (iii) The home **shall** discharge a resident from a long-term care home if the resident dies.
- (iv) A home **may** discharge a short-stay resident at the end of the period for which the resident was admitted to the home. (emphasis added)

Unless your father meets one of the legal criteria for discharge, the home cannot discharge him. If they try to do so unlawfully, you should immediately contact the compliance advisor at the Ministry of Health and Long-Term Care who is responsible for that home. If they are not helpful, seek legal advice.

**4. How long can my father stay in hospital before he must be discharged from the long-term care home?**

The home **must** discharge your father if he is in hospital longer than 21 days for a medical absence or 45 days for a psychiatric absence.

This period of time can be extended by 30 days for a medical absence and 15 days for a psychiatric absence if you are willing to pay an additional bed-holding fee. This fee is currently set at \$53 per day and it must be paid on top of the regular accommodation rate you are already paying. The agreement to pay this fee must be in writing.

There is no maximum or cumulative annual time that your father may be absent from a home for either a medical or psychiatric absence. The “clock” starts again if he returns to the home.

Different rules would apply if your dad were a short stay resident, for example, in respite care. These rules are beyond the scope of this article.

**5. I have consented to my father going to hospital for a 45 day psycho-geriatric assessment. If he is not ready to return at the end of that time, can they refuse his re-admission?**

If your father does not return to the home at the end of the 45 days and you have not agreed to pay the bed-holding fee, then the home **must** discharge him. However, if he wishes to return to the long-term care home to maintain his bed, the home cannot refuse him.

Most hospitals which perform psycho-geriatric assessments require the referring facility to sign an agreement that they will accept the person back at the end of the 45 days. If they renege on that agreement, the hospital would be less likely to accept future referrals from that facility. Therefore, homes will generally, albeit sometimes reluctantly, accept the return of residents after the 45 day period, although they may attempt to either have the person readmitted for another 45 days or send them to hospital under the *Mental Health Act* if they consider them to be a “difficult patient.”

**6. The home has told me that they cannot care for my father any more. Can they discharge him?**

The only way that the home can discharge your father is if they are unable to provide him with a sufficiently secure environment to ensure his safety or the safety of those who come into contact with him.

The interdisciplinary team at the home will normally make this decision before bringing the matter to the appropriate managing body. If your father was absent from the home, the decision will be made by his physician or attending registered nurse (extended class).

The home must notify you of their decision as soon as possible. They must also assist you in identifying appropriate alternative accommodation and to plan for and assist you with your father's discharge.

**7. I disagree with the long-term care home and believe they can care safely for my father. He is incapable with respect to admission to a care home and I am his substitute decision-maker. Can the home discharge him without my consent?**

If this is the only criteria for his discharge, we do not believe that they can discharge your father without your consent. This is because the discharge must be an appropriate alternative accommodation. Appropriate alternative accommodation would always require consent for the admission. An emergency room or hospital bed is not considered "accommodation."

If the long-term care home is suggesting your father should go to another long-term care facility, you would have to apply for admission through the Community Care Access Centre, which would require your consent. Admission to a complex continuing care facility (chronic care) is done directly through the hospital, but also requires your consent.

Sometimes the home will claim that the Ministry of Health and Long-Term Care has authorized them to discharge a resident or refuse readmission after the person has been sent to hospital. We do not believe that the Ministry has such authority. If a discharge or refusal to readmit is threatened or it happens, we suggest you obtain legal advice.

**8. My father is in hospital due to severe bedsores which I believe were caused by poor care at the home. Can we discharge him from the home while in hospital and reapply for a new home from hospital?**

Yes. You are entitled to advise the home that he is not returning. However, you should be very careful in doing this. Due to a severe bed shortage, it may take a long time for your father to be admitted to a long-term care home of your choice. Hospitals do not want to get “stuck” with patients who are awaiting placement and may attempt to enforce discharge or other hospital policies in this regard. (For a discussion about hospital discharge policies generally, see “Seniors are Not Bed Blockers” by Judith Wahl, *ACE Newsletter*, Spring 2004, Vol. 3, No. 9 at page 7, available at [www.ancelaw.ca](http://www.ancelaw.ca))

You need to have a concrete reason for your decision to discharge your father and to be able to support your reasoning with evidence. Be sure to advise the appropriate hospital personnel of the reasons for the discharge. Also, you should immediately contact the Community Care Access Centre associated with the hospital to apply for admission to another home and to explain why your father cannot return to the originating long-term care home.

**9. I am being asked to sign a “level of care” form on behalf of my incapable father. One of the issues is whether or not I would want my father to be hospitalized if he becomes ill. I don’t know whether to sign the form or not.**

“Level of care” forms are a type of advance directive. Substitute decision-makers cannot legally sign such a document. While capable residents can sign them, we do not advise them to do so and recommend that they obtain legal advice as these documents can be misinterpreted and misused.

For a complete discussion on advance care planning, please see “Advance Care Planning” by Judith Wahl, *ACE Newsletter*, Spring 2001, Vol. 3, No. 3 at page 4, available at [www.ancelaw.ca](http://www.ancelaw.ca).