SERVING FAMILIES IN GEORGIA AND TENNESSEE
ELDER LAW
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Connecting Health, Wealth and Peace of Mind

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Temporary Health Care Placement Decision Maker for Adult Act
(with related federal and Georgia law on nursing home transfers and discharges)

The Temporary Health Care Placement Decision Maker for Adult Act (the "Act") is designed to facilitate admissions, transfers and discharges deemed medically necessary when the patient is unable to make or communicate decisions for himself or herself. The Act is triggered by a physician's certification (Section 31-36A-5). That certification, which goes into the patient's medical record, must indicate that (1) the patient is unable to consent for himself or herself; and (2) that the physician believes it is in the patient's best interest to be discharged from a hospital or other health care institution and transferred or admitted to a different institution such as a personal care home or nursing home. It should be noted that non-payment is not an acceptable justification for the certification; it is the patient's best interests which must be documented, not the best interest of the facility.

Once the certification is made, those persons identified in Section 31-36A-6(a) are authorized to consent to discharge, admission or transfer for the patient. They must act in the patient's best interests and, where known, must abide by the patient's wishes. The facility's discharge planner or social worker must assist the decision-maker in identifying the least restrictive setting available. The power to act terminates when the transaction is complete or when the patient is able to consent to his or her own decisions. It also ends when a person listed higher in terms of decision-making priority, is identified.

If diligent search has been made and there is no one with authority to consent, then Section 31-36A-7 authorizes the facility to file a petition with the Probate Court seeking designation of a person who may consent for the patient. If the petition is granted, then the decision-maker must select the least restrictive placement.

Neither Section 6 nor 7 abrogate a patient's right to make health care decisions or to refuse treatment. Generally, consent is required prior to treatment and failure to secure appropriate consent and follow the statutory process may create liability.[1] In most cases,

[1] For example, in *Albany Urology Clinic, P.C. v. Cleveland*, 272 Ga. 296 (2000), the Court noted that a physician may be liable for battery if the patient is subjected to treatment without consent or if consent is secured through misrepresentation or the failure to respond truthfully to a patient's queries. In *Joiner v.*

this means "informed" consent, although in Georgia, the right to be fully informed of potentially adverse consequences is a statutory right. *Blotner v. Doreika*, 285 Ga. 481 (2009). Generally, informed consent must be established before any surgical or diagnostic procedure is performed. *See* O.C.G.A. § 31-9-6.1. Informed consent is also required where a licensing board has issued regulations. Failure to secure informed consent where required may result in liability.

In *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990), the United State Supreme Court observed that the "logical corollary of the doctrine of informed consent is that the patient generally possess the right not to consent, that is, to refuse treatment." The right to refuse care is a constitutionally protected liberty interest. *Id*., at 278. That right, however, is one possessed by a "competent individual." *Id*., at 277. One's ability to exercise that right, however, is complicated when the patient is not competent: how does such a patient make an informed and voluntary choice? "Such a 'right' must be exercised for her, if at all, by some sort of surrogate." *Id*., at 281. For this reason, in cases where death would likely occur, the State may require that evidence of the patient's wishes as to withdrawal of treatment be proved by clear and convincing evidence. Id., at 280. The same likely applies where a certain, substantial injury would occur.

Text of the Act

O.C.G.A. § 31-36A-1. Short title.

This chapter shall be known and may be cited as the "Temporary Health Care Placement Decision Maker for an Adult Act."

O.C.G.A. § 31-36A-2. Legislative finding

(a) The General Assembly recognizes that there may be occasions when an adult has not made advance arrangements for a situation when he or she is unable to consent to his or her own admission to or discharge from one health care facility or placement or transfer to another health care facility or placement. Under these circumstances, the General

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Lee, 197 Ga. App. 754 (1990), the Court of Appeals stated that a cause of action for battery exists when objected-to treatment is performed without the consent of, or after withdrawal of consent by, the patient. *See* O.C.G.A. § 51-1-13. The same logic should apply to claims of false imprisonment. O.C.G.A. § 51-7-20. In *Williams v. Smith*, 179 Ga. App. 712 (1986), a false imprisonment case was brought where a certificate similar to the one described in the Act was issued and a peace officer forcibly took the patient to a mental health examination. The court indicated that strict adherence to the statute was required to avoid a claim of false imprisonment. Further, "[w]here one is held in custody pursuant to a void or defective physician's certificate, there is a viable claim for false imprisonment, but only if the certificate was not issued in 'good faith.' Where, as in *Kendrick*, *supra*, the detention is not evidenced by some form of objective compliance by the physician with all applicable procedural process requirements, there is a viable claim for false imprisonment." In *Brand v. University Hospital*, 240 Ga. App. 824 (1999), where a patient was involuntarily kept in a behavioral health unit overnight, the court found sufficient evidence to submit false imprisonment to a jury.

Assembly further recognizes that it may be necessary and in the adult's best interest to be admitted to or discharged from one health care facility or placement or transferred to an alternative facility or placement.

(b) In recognition of the findings in subsection (a) of this Code section, the General Assembly declares that the laws of the State of Georgia shall provide for the most appropriate placement available for these individuals and shall declare an order of priority for those persons who may make the decision to transfer, admit, or discharge such adults at the appointed times and a procedure for obtaining authorization from the court in the absence of a person authorized to consent.

O.C.G.A. § 31-36A-3. Definitions

As used in this chapter, the term:

(1) "Absence of a person authorized to consent" means that:

> (A) After diligent efforts for a reasonable period of time, no person authorized to consent under the provisions of Code Section 31-36A-6 has been located; or
>
> (B) All such authorized persons located have affirmatively waived their authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement, provided that dissent by an authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.

(2) "Unable to consent" means that an adult is unable to:

> (A) Make rational and competent decisions regarding his or her placement options for health or personal care; or
>
> (B) Communicate such decisions by any means.

O.C.G.A. § 31-36A-4. Construction of chapter in relation to Title 37

This chapter shall not apply to involuntary examination and hospitalization for treatment of mental illness, which shall continue to be governed by Title 37.

O.C.G.A. § 31-36A-5. Certification by physician

An attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, after having personally examined an adult, may certify in the adult's medical records the following:

> (1) The adult is unable to consent for himself or herself; and

(2) It is the physician's belief that it is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition and to be transferred to or admitted to an alternative facility or placement, including, but not limited to, nursing facilities, personal care homes, rehabilitation facilities, and home and community based programs.

O.C.G.A. § 31-36A-6. Persons authorized to consent; expiration of authorization; limitations on authority to consent; effect on other laws; immunity from liability or disciplinary action

(a) Upon a physician's certification pursuant to Code Section 31-36A-5, and in addition to such other persons as maybe otherwise authorized and empowered, any one of the following persons is authorized and empowered to consent, in the priority order listed below, either orally or otherwise, to such transfer, admission, or discharge:[2]

(1) Any adult, for himself or herself;
(2) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of this title;
(3) Any guardian of the person for his or her ward;
(4) Any spouse for his or her spouse;
(5) Any adult child for such person's parent;
(6) Any parent for such person's adult child;
(7) Any adult for such person's adult brother or sister;
(8) Any grandparent for such person's adult grandchild;
(9) Any adult grandchild for such person's grandparent;
(10) Any adult uncle or aunt for such person's adult nephew or niece; or
(11) Any adult nephew or niece for such person's adult uncle or aunt.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to a transfer, admission, or discharge which the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered or, if the patient's preferences are unknown, which such person believes the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered. The current health care facility's discharge planner, social worker, or other designated personnel shall assist the person authorized to consent under subsection (a) of this Code section with identifying the most appropriate, least restrictive level of care available, including home and community based services and available placements, if any, in reasonable proximity to the patient's residence.

[2] This is similar to the list appearing in O.C.G.A. § 31-9-2.

(c) The authorization to consent to such transfer, admission, or discharge shall expire upon the earliest of the following:

> (1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with applications for financial coverage and insurance benefits for health or personal care;
> (2) Upon a physician's certification that the adult is able to consent to decisions regarding his or her placements for health or personal care; or
> (3) Upon discovery that another person authorized under subsection (a) of this Code section of a higher priority is available who has not affirmatively waived his or her authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement, provided that dissent by such authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.

(d) The authorization to give consent for transfer, admission, or discharge is limited solely to said transfer, admission, or discharge decision and responsibilities associated with such decision, including providing assistance with financial assistance applications. It does not include the power or authority to perform any other acts on behalf of the adult not expressly authorized in this Code section.

(e) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, the adult retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

(f) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct.

O.C.G.A. § 31-36A-7. Petition for order by health care facility; insurance; expiration, and limited authorization of order; effect on other laws; immunity from liability or disciplinary action

(a) In the absence of a person authorized to consent under the provisions of Code Section 31-36A-6, any interested person or persons, including, but not limited to, any authority, corporation, partnership, or other entity operating the health care facility where the adult who is unable to consent is then present, with or without the assistance of legal counsel, may petition the probate court for a health care placement transfer, admission, or discharge order. The petition must be verified and filed in the county where the adult requiring an alternative placement or transfer, admission, or discharge resides or is found, provided that the probate court of the county where the adult is found shall not have jurisdiction to grant the order if it appears that the adult was

removed to that county solely for purposes of filing such a petition. The petition shall set forth:

(1) The name, age, address, and county of the residence of the adult, if known;
(2) The name, address, and county of residence of the petitioner;
(3) The relationship of the petitioner to the adult;
(4) The current location of the adult;
(5) A physician's certification pursuant to Code Section 31-36A-5;
(6) The absence of any person to consent to such transfer, admission, or discharge as authorized by the provisions of Code Section 31-36A-6;
(7) Name and address of the recommended alternative health care facility or placement; and
(8) A statement of the reasons for such transfer, admission, or discharge as required by subsections (b) and (c) of this Code section.

(b) The petition shall be supported by the affidavit of an attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, attesting the following:

(1) The adult is unable to consent for himself or herself;
(2) It is the physician's belief that it is in the adult's best interest to be admitted to or discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition or to be transferred to an alternative facility or placement, including, but not limited to, nursing facilities, personal care homes, rehabilitation facilities, and home and community based programs; and
(3) The identified type of health care facility or placement will provide the adult with the recommended services to meet the needs of the adult and is the most appropriate, least restrictive level of care available.

(c) The petition shall also be supported by the affidavit of the discharging health care facility's discharge planner, social worker, or other designated personnel attesting to and explaining the following:

(1) There is an absence of a person to consent to such transfer, admission, or discharge as authorized in Code Section 31-36A-6;
(2) The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care and reasons therefor; and
(3) Alternative facilities or placements were considered, including home and community based placements and available placements, if any, that were in reasonable proximity to the adult's residence.

(d) The court shall review the petition and accompanying affidavits and other information to determine if all the necessary information is provided to the court as

required in subsections (a), (b), and (c) of this Code section. The court shall enter an instanter order if the following information is provided:

(1) The adult is unable to consent for himself or herself;
(2) There is an absence of any person to consent to such transfer, admission, or discharge as authorized in Code Section 31-36A-6;
(3) It is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution or placement providing health or personal care for treatment for any type of physical or mental condition and to be admitted or transferred to an alternative facility or placement;
(4) The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care; and
(5) Alternative facilities or placements were considered, including home and community based placements and available placements, if any, in reasonable proximity to the adult's residence. The order shall authorize the petitioner or the petitioner's designee to do all things necessary to accomplish the discharge from a hospital, institution, medical center, or other health care institution and the transfer to or admission to the recommended facility or placement.

(e) At the same time as issuing the order, the court shall provide a copy of said order to the commissioner of community health.

(f) The order authorizing such transfer, admission, or discharge shall expire upon the earliest of the following:

(1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with the completion of applications for financial coverage and insurance benefits for the health or personal care;
(2) Upon a physician's certification that the adult is able to understand and make decisions regarding his or her placements for health or personal care and can communicate such decisions by any means; or
(3) At a time specified by the court not to exceed 30 days from the date of the order.

(g) The order is limited to authorizing the transfer, admission, or discharge and other responsibilities associated with such decision, such as authorizing the application for financial coverage and insurance benefits. It does not include the authority to perform any other acts on behalf of the adult not expressly authorized in this Code section.

(h) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, such person retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

(i) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct.

Hospital Discharge Planning

Hospitals must provide Medicare patients with notice concerning a patient's discharge rights. *See* 42 C.F.R. § 482.13. Prior to a discharge, the hospital must evaluate the patient's condition and develop a discharge plan. See 42 C.F.R. § 482.43. If a patient needs post-hospital care, then the hospital must transfer or refer the patient, along with any necessary medical information, to appropriate facilities, agencies or outpatient services for follow-up or ancillary care. 42 C.F.R. § 482.43(d). The hospital must inform that patient of his or her right to choose among the Medicare providers that provide post-hospital services. The hospital cannot specify or limit the qualified providers available to the patient. 42 C.F.R. § 482.43(c)(7).

Involuntary Transfers and Discharges from Nursing Home

A nursing facility that accepts Medicare or Medicaid must comply with federal law regarding transfers and discharges. Generally, there are only six reasons why a resident may be discharged. They are: (1) the discharge is necessary to meet the resident's needs and the facility cannot meet those needs; (2) the resident no longer requires nursing home care; (3) the safety of other individuals in the facility is endangered; (4) the health of other individuals in the facility is endangered; (5) the resident has failed to pay for services; or (6) the facility ceases to operate. The first four reasons require a determination by a physician that the condition exists. Prior to discharge or transfer, notice must be given to the resident. Medicaid residents who are hospitalized must be given the first available bed and readmitted when they leave the hospital.

42 U.S.C. § 1395i-3. Requirements for, and assuring quality of care in skilled nursing facilities (Medicare)

Sub-section (c)(2)

Transfer and discharge rights.

(A) In general. A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless--

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to

have paid under this title or title XIX [42 USCS §§ 1395 et seq. or 1396 et seq.] on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

(B) Pre-transfer and pre-discharge notice.

(i) In general. Before effecting a transfer or discharge of a resident, a skilled nursing facility must--

(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice. The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except--

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice. Each notice under clause (i) must include--

(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3); and

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 USCS §§ 3021 et seq. or 3058 et seq.] in accordance with section 712 of the Act [42 USCS § 3058g]).

(C) Orientation. A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

42 U.S.C. § 1396r. Requirements for nursing facilities (Medicaid)
Sub-section (c)(2)

Transfer and discharge rights.

(A) In general. A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless--

(i) the transfer or discharge is necessary to meet the resident's welfare and the

resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title [42 USCS §§ 1396 et seq.] or title XVIII [42 USCS §§ 1395 et seq.] on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title [42 USCS §§ 1396 et seq.] after admission to the facility, only charges which may be imposed under this title [42 USCS §§ 1396 et seq.] shall be considered to be allowable.

(B) Pre-transfer and pre-discharge notice.

(i) In general. Before effecting a transfer or discharge of a resident, a nursing facility must--

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice. The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except--

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice. Each notice under clause (i) must include--

(I) for transfers or discharges effected on or after I) October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3);

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 USCS §§ 3021 et seq. or 3058 et seq.] in accordance with section 712 of the Act [42 USCS § 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address

and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C [of title I] of the Developmental Disabilities Assistance and Bill of Rights Act [42 USCS §§ 15041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i)), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act [42 USCS §§ 10801 et seq.].

(C) Orientation. A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed-hold policy and readmission.

(i) Notice before transfer. Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning--

(I) the provisions of the State plan under this title [42 USCS §§ 1396 et seq.] regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return. A nursing facility must establish and follow a written policy under which a resident--

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives. A nursing facility must comply with the requirement of section 1902(w) [42 USCS § 1396a(w)] (relating to maintaining written policies and procedures respecting advance directives).

(F) Continuing rights in case of voluntary withdrawal from participation.

(i) In general. In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this title [42 USCS §§ 1396 et seq.] but continues to provide services of the type provided by nursing facilities--

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the

date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) Information for new residents. The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this title with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this title.

(iii) Continuation of payments and oversight authority. Notwithstanding any other provision of this title [42 USCS §§ 1396 et seq.], with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of--

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this title [42 USCS §§ 1396 et seq.]; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) No application to new residents. This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

O.C.G.A. § 31-8-116. Involuntary transfer of residents discharged from facility; return to facility after transfer

(a) Except in an emergency, where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve or reduce, a facility may involuntarily transfer a resident only in the following situations and after other reasonable alternatives to transfer have been exhausted:

(1) A physician determines that failure to transfer the resident will threaten the health or safety of the resident or others and documents that determination in the resident's

medical record. If the physician determines that the facility cannot provide care, treatment, and services which are adequate and appropriate, it shall be conclusively presumed that the failure to transfer will threaten the health or safety of the resident. If the basis for the transfer or discharge is the safety of the resident himself, the resident shall not be involuntarily transferred or discharged unless a physician determines that such transfer or discharge is not reasonably expected to endanger the resident to a greater extent than remaining in the facility and documents that determination in the resident's medical records;

(2) The facility does not participate in or voluntarily or involuntarily ceases to operate or participate in the program which reimburses the cost of the resident's care;

(3) Nonpayment of allowable fees has occurred. The conversion of a resident from private pay status to Medicaid eligibility due to exhaustion of personal financial resources or from Medicare to Medicaid does not constitute nonpayment of fees under this paragraph; or

(4) When the findings of a Medicare or Medicaid medical necessity review determine that the resident no longer requires the level of care provided at the facility.

(b) If the facility voluntarily or involuntarily ceases to operate or participate in the program which reimburses the costs of the resident's care, the facility must cooperate fully with the state Medicaid agency and the Centers for Medicare and Medicaid Services regional office in the implementation of any transfer planning and transfer counseling conducted by these agencies.

(c) The facility shall assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge. The plan for such transfer or discharge shall be designed to mitigate the effects of transfer stress to the resident. Such plan shall include counseling the resident, guardian, or representative regarding available community resources and informing the appropriate state or social service organization.

(d) The facility must notify the resident, guardian or representative, and attending physician at least 30 days before any involuntary transfer, except a transfer pursuant to paragraph (4) of subsection (a) of this Code section. This notice must be in writing and must contain:

(1) The reasons for the proposed transfer;

(2) The effective date of the proposed transfer;

(3) Notice of the right to a hearing pursuant to Code Section 31-8-125 and of the right to representation by legal counsel; and

(4) The location to which the facility proposes to transfer the resident.

(e) The resident shall receive at least 15 days' notice prior to an involuntary intrafacility transfer**.**

(f) If two residents in a facility are married and the facility proposes to transfer involuntarily one spouse to another facility at a similar level of care, the facility must give the other spouse notice of his or her right to be transferred to the same facility. If the spouse notifies a facility in writing that he wishes to be transferred, the facility must transfer both spouses on the same day, pending availability of accommodations.

(g) Each resident shall be discharged from a facility after the resident or guardian gives the administrator or person in charge of the facility notice of the resident's desire to be discharged and the date of the expected departure. Where the resident appears to be incapable of living independently of the facility, the facility shall notify the Department of Human Services in order to obtain social or protective assistance for the resident immediately. The notice of the discharge by the resident or guardian, the expected and actual date thereof, and notice to the department, where required, shall be documented in the resident's records. Upon such discharge and, if required, notice to the department, the facility is relieved from any further responsibility for the resident's care, safety, or well-being.

(h) Whenever allowed by the resident's health condition, a resident shall be provided treatment and care, rehabilitative services, and assistance by the facility to prepare the resident to return to the resident's home or other living situation less restrictive than the facility. Upon the request of the resident, guardian, or representative, the facility shall provide him with information regarding available resources and inform him of the appropriate state or social service organizations.

(i) Each resident transferred from a facility to a hospital, other health care facility, or trial alternative living placement shall have the right to return to the facility immediately upon discharge from the hospital or other health care facility or upon termination of the trial living placement, provided that the resident has continued to pay the facility or third-party payment is provided for the period of the resident's absence. In cases of nonpayment to the facility during such absence, a resident who requests to return to a facility from a hospital shall be admitted by the facility to the first bed available after discharge from the hospital.

Georgia Rules and Regulations § 290-5-39-.11. Transfer and Discharge

(1) In an emergency situation where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve, the facility may involuntarily transfer the resident to another health facility. The person in charge shall document in the resident's file the reasons for such emergency transfer and shall immediately inform the resident, guardian and other persons of the resident's choice regarding such transfer and the place where the resident is to be transferred.

(2) In all other situations an involuntary transfer or discharge must be in accordance with any of the following reasons and procedures and only after all other reasonable alternatives to transfer have been exhausted:

(a) The resident's physician or, if unavailable, another physician determines that failure to transfer the resident will result in injury or illness to the resident or others. The resident's physician shall be kept informed of actions taken. The attending physician must document that determination in the resident's record. If the basis for the transfer or discharge is the threat of injury or illness to the resident only, the resident cannot be transferred or discharged unless the physician documents in the resident's medical record that such transfer or discharge is not expected to endanger the resident to a greater extent than remaining in the facility; or

(b) The facility does not participate in, or voluntarily or involuntarily ceases to operate or participate in the program which reimburses for the resident's care. In the event that a facility voluntarily or involuntarily ceases to operate or participate in the program which reimburses for the resident's care and proposes to transfer or discharge a resident because of that fact, the facility must cooperate fully with and take all reasonable directives from the State Medicaid Agency and the Health Care Financing Administration Regional Office in the implementation of any transfer planning and transfer counseling conducted by these agencies; or

(c) Nonpayment of allowable fees has occurred. When a resident has been converted from full or private pay status to Medicaid eligibility due to exhaustion of personal financial resources, nonpayment of allowable fees has not occurred so long as the facility participates in the Medicaid program. Similarly, conversion from Medicare/Medicaid eligibility status does not constitute nonpayment of allowable fees; or

(d) The findings of a Medicare or Medicaid medical necessity review determine that the resident no longer requires the level of care presently being provided, subject to the right of the resident to any appeal procedure available to challenge the determination of medical necessity review. Where space permits, the resident must be given the option of staying at the facility, if the facility is certified to provide the new level of care.

(3) The facility must give written notice to the resident, guardian or representative, if there is no guardian, and the resident's physician at least 30 days before any proposed transfer or discharge is made in accordance with subsections (2)(a), (2)(b), or (2)(c) of this rule. The written notice must contain the following information: the reasons for the proposed transfer or discharge; the effective date of the proposed transfer or discharge; the location or other facility to which the facility proposes to transfer or discharge the resident; and notice of the right to a hearing pursuant to the Georgia Administrative Procedure Act and Section .15 of these rules and regulations, and of the right to representation by legal counsel. If the resident so desires, the facility shall also send a copy of such notice to the community ombudsman, or state ombudsman if there is no community ombudsman.

(4) If two residents are married and the facility proposes to transfer one spouse to another facility at a similar level of care, notice must be given to the other spouse of the right to be transferred to the same facility if the other spouse makes a request to that facility in writing. Married residents must be transferred on the same day, pending availability of accommodations. If also available, that facility shall place both residents in the same room if the residents so desire.

(5) In the event of an involuntary transfer pursuant to subsections (2)(a), (2)(b), or (2)(c) of this rule, the facility must assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge by developing a plan designed to minimize any transfer stress to the resident. Such plan shall include counseling the resident, guardian, or representative, regarding available community resources and informing the appropriate state or social service organizations, including, but not limited to, the community or state long-term care ombudsman and assisting in arranging for the transfer.

(6) In the event that the facility proposes an involuntary transfer of the resident to another bed in the same facility**,** the resident and guardian shall receive 15 days written notice prior to such change.

(7) A resident shall be voluntarily discharged from a facility when the resident or guardian gives the person in charge notice of the resident's intention to be discharged and the expected date of departure. In the case of a resident without a guardian, the facility may not require that the resident be "signed out" or authorized to be discharged by any person or agency other than the resident. Notice of the resident's or guardian's intention to be discharged, and the expected and actual dates of departure shall be documented in the resident's record. If the resident appears to be capable of living independently of the facility, upon such discharge, the facility is relieved of any further responsibility for the resident's care, safety, or well-being.

(8) If a resident being voluntarily discharged into the community, appears to be incapable of living independently of the facility, in addition to the requirements under section (7) of this rule, the facility shall also do the following:

(a) Notify the County Director of the Department of Family and Children Services in order to obtain social or protective services for the resident immediately after the facility receives notice of the resident's intention to be discharged;

(b) Document such notice to the county director of the Department of Family and Children Services in the resident's record along with the resident's notice of intention to be discharged and the expected and actual dates of departure;

(c) Upon notice to the county director of the Department of Family and Children Services and upon actual discharge of the resident, the facility shall be relieved of any further responsibility for the resident's care, safety, or well-being.

(9) Each resident transferred from a facility to a hospital, other health care facility, or trial alternative living placement shall have the right to return to the facility immediately upon discharge from the hospital, other health care facility or upon termination of the trial living placement, provided that the resident has continued to pay the facility or payment on behalf of the resident by another person or agency has been provided for the period of the resident's absence. If payment is provided for the period of absence, the facility shall continue the same room assignment for such resident. In cases of nonpayment to the facility during such absence, a resident who requests to return to a facility from a hospital shall be admitted to the facility to the first bed available, with priority over any existing waiting list.

(10) Whenever allowed by the resident's health condition, a resident shall be provided treatment and care, rehabilitative services, and assistance by the facility to prepare the resident to return to the resident's home or other living situation less restrictive than the facility. Upon the request of the resident, guardian, or representative, the facility shall provide him with information regarding available resources and inform him of the appropriate state or social service organizations.