

Right to Readmission from the Hospital or Therapeutic Leave

Q: If a nursing home resident is sent to the hospital or goes on therapeutic leave, does she have the right to come back to the same facility once she is ready to be released from the hospital or to return from therapeutic leave?

A: If the resident is Medicaid-eligible and still needs nursing home care, she does have the right to be readmitted to the same facility as soon as a bed in a semi-private room with the same gender roommate becomes available. This right clearly applies to all Medicaid residents as long as the resident still requires nursing home care and is eligible for Medicaid nursing facility services. The facility must have a written policy regarding the readmission rights for those whose hospital stay or therapeutic leave exceeds the state's bed hold period.

Significantly, a facility is required to readmit a resident even if the resident has an unpaid bill, the facility considers the resident to be a danger to the health or safety of others, or the facility claims the resident's needs cannot be met by the facility. The facility must readmit the resident, but if there is a justifiable reason for transfer or discharge, the facility could then begin transfer/discharge proceedings by following the requirements set out in federal and state law (See Transfer/Discharge Rights)

Q: What is Virginia's bed hold coverage for hospital stays or therapeutic leave?

A: Virginia Medicaid does not pay for any bed hold days when a nursing home resident is admitted to the hospital. Unless the resident or family chooses to pay to hold the specific bed, the facility has the right to offer the bed to another person. However, while the hospitalized resident may not be able to return to the same bed if it has already been filled, he or she still has the right to be readmitted to the same facility to the next available bed in a semi-private room, as long as the resident still requires nursing home care and is eligible for Medicaid nursing facility services.

Virginia DMAS does cover up to 18 therapeutic leave days within a 12 month period. During these 18 days, Medicaid will pay to hold the bed of the resident if the leave is within the resident's plan of care and that is noted

in the resident's chart. Therapeutic leave includes visits to relatives or friends or admission to a rehabilitation center for up to 7 days for evaluation, but it does not include admission to an inpatient hospital.

Q: Does a nursing home have any obligation to advise residents and families about the resident's readmission rights?

A: Yes. Two written notices are required—one notice must be given to the resident and a family member or legal representative before a resident is transferred to a hospital or allowed to go on therapeutic leave (probably given at time of admission as part of the admissions package). This notice must state the duration of the bed-hold policy under Medicaid and the facility's policy regarding the bed hold period, including the facility's readmission policy. A second notice about the bed hold policy must be given at the time the resident is transferred to the hospital or for therapeutic leave.

In addition, the State Provider Manual states that the facility must post a notice regarding readmission rights in a conspicuous place accessible to residents and their families, and that the resident's record must include a statement signed by the resident or his representative that he has been fully informed of the right to readmission.

Q: Are nursing homes required to keep any documentation of residents' transfers to the hospital and of whether the resident was readmitted, etc.?

A: Yes. According to the State Provider Manual, a facility is supposed to document each discharge, the date of admission to the hospital, the date of discharge from the hospital, the discharge destination, and if the destination is not the pre-admission facility, the reason the resident was not re-admitted. The Provider Manual also requires follow-up contacts by the pre-admission facility to ensure the resident is offered the next available vacancy, including offers of the next available vacancy in writing and signed by the resident or representative, and documentation of the reason if the resident was not readmitted at the time of the next vacancy. The only exception to the documentation requirement is if a facility has submitted a letter to DMAS indicating that the facility routinely holds beds for at least 12 days for residents discharged to a hospital, regardless of whether anyone is paying to hold the bed.

Q: What can a resident do if she is sent to the hospital but the nursing home refuses to re-admit her once the hospital is ready to release her?

A: The resident, legal representative or family member, or the hospital social worker should contact the local long term care ombudsman to see if he or she can persuade the nursing home administrator of the facility's legal obligation to readmit the resident to the first available bed. If the ombudsman is unable to obtain the resident's readmission and if the resident is on Medicaid and still needs nursing home care, the resident should promptly file an appeal with the Department of Medical Assistance Services (DMAS or Medicaid) so that there can be a hearing to determine whether the facility acted properly. It is important to act quickly on a failure to readmit case because the hospital will be eager to discharge the resident and may be forced to send the resident to another facility (which could be miles away from family and friends) if the first facility refuses to readmit the resident.