



Senate

General Assembly

File No. 453

February Session, 2022

Substitute Senate Bill No. 453

Senate, April 13, 2022

The Committee on Public Health reported through SEN. DAUGHERTY ABRAMS of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING TRANSFERS AND DISCHARGES OF RESIDENTIAL CARE HOME RESIDENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-535a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2022*):

3 (a) As used in this section: [, a "facility"]

4 (1) "Facility" means a residential care home, as defined in section 19a-
5 490; [.]

6 (2) "Emergency" means a situation in which a resident of a facility
7 presents an imminent danger to the resident's own health or safety, the
8 health or safety of another resident or the health or safety of an
9 employee or the owner of the facility;

10 (3) "Department" means the Department of Public Health; and

11 (4) "Commissioner" means the Commissioner of Public Health, or the
12 commissioner's designee.

13 (b) A facility shall not transfer or discharge a resident from the facility
14 unless (1) the transfer or discharge is necessary to meet the resident's
15 welfare and the resident's welfare cannot be met in the facility, (2) the
16 transfer or discharge is appropriate because the resident's health has
17 improved sufficiently so the resident no longer needs the services
18 provided by the facility, (3) the health or safety of individuals in the
19 facility is endangered, (4) the resident has failed, after reasonable and
20 appropriate notice, to pay for a stay or a requested service [.] at the
21 facility, or (5) the facility ceases to operate. In the case of an involuntary
22 transfer or discharge, the facility shall provide written notice to the
23 resident and, if known, [his] the resident's legally liable relative,
24 guardian or conservator [shall be given a thirty-day written notification
25 which includes] not less than thirty days prior to the proposed transfer
26 or discharge date, except when the facility has requested an immediate
27 transfer or discharge in accordance with subsection (e) of this section.
28 Such notice shall include the reason for the transfer or discharge, [and
29 notice of] the effective date of the transfer or discharge, the right of the
30 resident to appeal a transfer or discharge by the facility pursuant to
31 subsection (d) of this section and the resident's right to represent himself
32 or herself or be represented by legal counsel. Such notice shall be in a
33 form and manner prescribed by the commissioner, as modified from
34 time to time, and shall include the name, mailing address and telephone
35 number of the State Long-Term Care Ombudsman and be sent by
36 facsimile or electronic communication to the Office of the Long-Term
37 Care Ombudsman on the same day as the notice is given to the resident.
38 If the facility knows the resident has, or the facility alleges that the
39 resident has, a mental illness or an intellectual disability, the notice shall
40 also include the name, mailing address and telephone number of the
41 entity designated by the Governor in accordance with section 46a-10b to
42 serve as the Connecticut protection and advocacy system. No resident
43 shall be involuntarily transferred or discharged from a facility if such
44 transfer or discharge presents imminent danger of death to the resident.

45 (c) The facility shall be responsible for assisting the resident in finding
46 [appropriate placement] an alternative residence. A discharge plan,
47 prepared by the facility, [which indicates] in a form and manner
48 prescribed by the commissioner, as modified from time to time, shall
49 include the resident's individual needs and shall [accompany the
50 patient] be submitted to the resident not later than seven days after the
51 notice of transfer or discharge is issued to the resident. The facility shall
52 submit the discharge plan to the commissioner at or before the hearing
53 held pursuant to subsection (d) of this section.

54 (d) (1) [For transfers or discharges effected on or after October 1, 1989,
55 a] A resident or [his] the resident's legally liable relative, guardian or
56 conservator who has been notified by a facility, pursuant to subsection
57 (b) of this section, that [he] the resident will be transferred or discharged
58 from the facility may appeal such transfer or discharge to the
59 Commissioner of Public Health by filing a request for a hearing with the
60 commissioner [within] not later than ten days [of] after the receipt of
61 such notice. Upon receipt of any such request, the commissioner [or his
62 designee] shall hold a hearing to determine whether the transfer or
63 discharge is being effected in accordance with this section. Such a
64 hearing shall be held [within] not later than seven business days [of]
65 after the receipt of such request. [and a determination made by the] The
66 commissioner [or his designee within] shall issue a decision not later
67 than twenty days [of the termination of] after the closing of the hearing
68 record. The hearing shall be conducted in accordance with chapter 54.

69 [(2) In an emergency the facility may request that the commissioner
70 make a determination as to the need for an immediate transfer or
71 discharge of a resident. Before making such a determination, the
72 commissioner shall notify the resident and, if known, his legally liable
73 relative, guardian or conservator. The commissioner shall issue such a
74 determination no later than seven days after receipt of the request for
75 such determination. If, as a result of such a request, the commissioner or
76 his designee determines that a failure to effect an immediate transfer or
77 discharge would endanger the health, safety or welfare of the resident
78 or other residents, the commissioner or his designee shall order the

79 immediate transfer or discharge of the resident from the facility. A
80 hearing shall be held in accordance with the requirements of
81 subdivision (1) of this subsection within seven business days of the
82 issuance of any determination issued pursuant to this subdivision.

83 (3) Any involuntary transfer or discharge shall be stayed pending a
84 determination by the commissioner or his designee. Notwithstanding
85 any provision of the general statutes, the determination of the
86 commissioner or his designee after a hearing shall be final and binding
87 upon all parties and not subject to any further appeal.]

88 (2) Any involuntary transfer or discharge that is appealed under this
89 subsection shall be stayed pending a final determination by the
90 commissioner.

91 (3) The commissioner shall send a copy of the decision regarding a
92 transfer or discharge to the facility, the resident and the resident's legal
93 guardian, conservator or other authorized representative, if known, or
94 the resident's legally liable relative or other responsible party, and the
95 State Long-Term Care Ombudsman.

96 (e) (1) In the case of an emergency, the facility may request that the
97 commissioner make a determination as to the need for an immediate
98 transfer or discharge of a resident by submitting a sworn affidavit
99 attesting to the basis for the emergency transfer or discharge. The facility
100 shall provide a copy of the request for an immediate transfer or
101 discharge and the notice described in subsection (b) of this section to the
102 resident. After receipt of such request, the commissioner may issue an
103 order for the immediate temporary transfer or discharge of the resident
104 from the facility. The temporary order shall remain in place until a final
105 decision is issued by the commissioner, unless earlier rescinded. The
106 commissioner shall issue the determination as to the need for an
107 immediate transfer or discharge of a resident not later than seven days
108 after receipt of the request from the facility. A hearing shall be held not
109 later than seven business days after the date on which a determination
110 is issued pursuant to this section. The commissioner shall issue a
111 decision not later than twenty days after the date on which the hearing

112 record is closed. The hearing shall be conducted in accordance with the
113 provisions of chapter 54.

114 (2) The commissioner shall send a copy of the decision regarding an
115 emergency transfer or discharge to the facility, the resident and the
116 resident's legal guardian, conservator or other authorized
117 representative, if known, or the resident's legally liable relative or other
118 responsible party and the State Long-Term Care Ombudsman.

119 (3) If the commissioner determines, based upon the request, that an
120 emergency does not exist, the commissioner shall proceed with a
121 hearing in accordance with the provisions of subsection (d) of this
122 section.

123 (f) A facility or resident who is aggrieved by a final decision of the
124 commissioner may appeal to the Superior Court in accordance with the
125 provisions of chapter 54. Pursuant to subsection (f) of section 4-183, the
126 filing of an appeal to the Superior Court shall not, of itself, stay
127 enforcement of an agency decision. The Superior Court shall consider
128 an appeal from a decision of the commissioner pursuant to this section
129 as a privileged case in order to dispose of the case with the least possible
130 delay.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	19a-535a

Statement of Legislative Commissioners:

In Subsection (e)(1), "The facility shall provide a copy of the request for an immediate transfer or discharge to the resident and the notice described in subsection (b) of this section." was changed to "The facility shall provide a copy of the request for an immediate transfer or discharge and the notice described in subsection (b) of this section to the resident." for clarity.

PH *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: See Below

Municipal Impact: None

Explanation

The bill aligns state statute with federal regulations to ensure Residential Care Homes can receive reimbursement under Medicaid as a home and community-based setting which results in no fiscal impact.

OLR Bill Analysis**SB 453*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING TRANSFERS AND DISCHARGES OF RESIDENTIAL CARE HOME RESIDENTS.*****SUMMARY**

This bill modifies requirements for the involuntary discharge of residential care home (RCH) residents to allow RCHs to qualify as Medicaid home- and community-based settings. Principally, it does the following:

1. requires the written discharge notice to include contact information for (a) the long-term care ombudsman for RCH residents and their legally liable residents and (b) Disability Rights Connecticut, Inc. for residents with mental illness or intellectual disability;
2. requires RCHs to provide residents with a discharge plan for alternate residency within seven days after issuing the discharge notice and, in the case of an appeal, submit it to the Department of Public Health (DPH) on or before the required hearing date;
3. requires DPH to make a determination on an RCH's request for an immediate, emergency transfer within 20 days after the required hearing (current law does not specify a deadline);
4. requires DPH to send a copy of the emergency discharge determination to the resident, the resident's legally liable representative, and the long-term care ombudsman;
5. requires DPH, if it determines an emergency discharge is not warranted, to proceed with a hearing under the regular involuntary discharge process; and
6. allows an RCH or a resident aggrieved by a DPH decision to

appeal to the Superior Court and requires the court to consider the appeal a privileged case.

The bill defines “emergency” as a situation in which a resident presents an imminent danger to the health and safety of him- or herself, another resident, or an owner or employee of the facility.

Lastly, the bill makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2022

WRITTEN DISCHARGE NOTICE

By law, RCHs must provide a written discharge notice to residents and their legally liable representatives at least 30 days prior to the date of an involuntary transfer. The notice must include the reason for the transfer and the resident’s right to appeal the discharge.

The bill also requires the notice to include the (1) resident’s right to represent him- or herself or be represented by legal counsel in an appeal and (2) contact information for the long-term care ombudsman and, for residents with mental illness or intellectual disability, also include the contact information for Disability Rights Connecticut. The notice must be sent electronically or by fax to the ombudsman the same day it is given to the resident and be in a form and manner the DPH commissioner prescribes.

SUPERIOR COURT APPEALS

The bill allows an RCH or a resident who is aggrieved by the DPH commissioner’s final decision to appeal to the Superior Court in accordance with the Uniform Administrative Procedure Act. Under the bill, filing an appeal with the court does not in itself stay the DPH decision. The court must consider these appeals as privileged cases in order to dispose of them with the least possible delay.

COMMITTEE ACTION

Public Health Committee

Joint Favorable
Yea 29 Nay 0 (03/25/2022)