



General Assembly

February Session, 2022

***Raised Bill No. 196***

LCO No. 696



Referred to Committee on HUMAN SERVICES

Introduced by:  
(HS)

***AN ACT PROHIBITING INVOLUNTARY DISCHARGES FROM NURSING HOMES AND RESIDENTIAL CARE HOMES TO TEMPORARY OR UNSTABLE HOUSING.***

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

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2 statutes is repealed and the following is substituted in lieu thereof  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

4 (a) For the purposes of this section: (1) "Facility" means an entity  
5 certified as a nursing facility under the Medicaid program or an entity  
6 certified as a skilled nursing facility under the Medicare program or  
7 with respect to facilities that do not participate in the Medicaid or  
8 Medicare programs, a chronic and convalescent nursing home or a rest  
9 home with nursing supervision as defined in section 19a-521; (2)  
10 "continuing care facility which guarantees life care for its residents" has  
11 the same meaning as provided in section 17b-354; (3) "transfer" means  
12 the movement of a resident from one facility to another facility or  
13 institution, including, but not limited to, a hospital emergency  
14 department, if the resident is admitted to the facility or institution or is

15 under the care of the facility or institution for more than twenty-four  
16 hours; (4) "discharge" means the movement of a resident from a facility  
17 to a noninstitutional setting; (5) "self-pay resident" means a resident who  
18 is not receiving state or municipal assistance to pay for the cost of care  
19 at a facility, but shall not include a resident who has filed an application  
20 with the Department of Social Services for Medicaid coverage for facility  
21 care but has not received an eligibility determination from the  
22 department on such application, provided the resident has timely  
23 responded to requests by the department for information that is  
24 necessary to make such determination; and (6) "emergency" means a  
25 situation in which a failure to effect an immediate transfer or discharge  
26 of the resident [that] would endanger the health, safety or welfare of the  
27 resident or other residents.

28 (b) A facility shall not transfer or discharge a resident from the facility  
29 except to meet the welfare of the resident which cannot be met in the  
30 facility, or unless the resident no longer needs the services of the facility  
31 due to improved health, the facility is required to transfer the resident  
32 pursuant to section 17b-359 or 17b-360, or the health or safety of  
33 individuals in the facility is endangered, or in the case of a self-pay  
34 resident, for the resident's nonpayment or arrearage of more than fifteen  
35 days of the per diem facility room rate, or the facility ceases to operate.  
36 In each case the basis for transfer or discharge shall be documented in  
37 the resident's medical record by a physician, a physician assistant or an  
38 advanced practice registered nurse. In each case where the welfare,  
39 health or safety of the resident is concerned the documentation shall be  
40 by the resident's physician, physician assistant or advanced practice  
41 registered nurse. A facility that is part of a continuing care facility which  
42 guarantees life care for its residents may transfer or discharge (1) a self-  
43 pay resident who is a member of the continuing care community and  
44 who has intentionally transferred assets in a sum that will render the  
45 resident unable to pay the costs of facility care in accordance with the  
46 contract between the resident and the facility, or (2) a self-pay resident  
47 who is not a member of the continuing care community and who has  
48 intentionally transferred assets in a sum that will render the resident

49 unable to pay the costs of a total of forty-two months of facility care from  
50 the date of initial admission to the facility.

51 (c) (1) Before effecting any transfer or discharge of a resident from the  
52 facility, the facility shall notify, in writing, the resident and the resident's  
53 guardian or conservator, if any, or legally liable relative or other  
54 responsible party if known, of the proposed transfer or discharge, the  
55 reasons therefor, the effective date of the proposed transfer or discharge,  
56 the location to which the resident is to be transferred or discharged, the  
57 right to appeal the proposed transfer or discharge and the procedures  
58 for initiating such an appeal as determined by the Department of Social  
59 Services, the date by which an appeal must be initiated in order to  
60 preserve the resident's right to an appeal hearing and the date by which  
61 an appeal must be initiated in order to stay the proposed transfer or  
62 discharge and the possibility of an exception to the date by which an  
63 appeal must be initiated in order to stay the proposed transfer or  
64 discharge for good cause, that the resident may represent himself or  
65 herself or be represented by legal counsel, a relative, a friend or other  
66 spokesperson, and information as to bed hold and nursing home  
67 readmission policy when required in accordance with section 19a-537.  
68 The notice shall also include the name, mailing address and telephone  
69 number of the State Long-Term Care Ombudsman. If the resident is, or  
70 the facility alleges a resident is, mentally ill or developmentally  
71 disabled, the notice shall include the name, mailing address and  
72 telephone number of the nonprofit entity designated by the Governor in  
73 accordance with section 46a-10b to serve as the Connecticut protection  
74 and advocacy system. The notice shall be given at least thirty days and  
75 no more than sixty days prior to the resident's proposed transfer or  
76 discharge, except where the health or safety of individuals in the facility  
77 are endangered, or where the resident's health improves sufficiently to  
78 allow a more immediate transfer or discharge, or where immediate  
79 transfer or discharge is necessitated by urgent medical needs or where  
80 a resident has not resided in the facility for thirty days, in which cases  
81 notice shall be given as many days before the transfer or discharge as  
82 practicable.

83 (2) The resident may initiate an appeal pursuant to this section by  
84 submitting a written request to the Commissioner of Social Services not  
85 later than sixty calendar days after the facility issues the notice of the  
86 proposed transfer or discharge, except as provided in subsection [(h)] (i)  
87 of this section. In order to stay a proposed transfer or discharge, the  
88 resident must initiate an appeal not later than twenty days after the date  
89 the resident receives the notice of the proposed transfer or discharge  
90 from the facility unless the resident demonstrates good cause for failing  
91 to initiate such appeal within the twenty-day period.

92 (d) No resident shall be transferred or discharged from any facility as  
93 a result of a change in the resident's status from self-pay or Medicare to  
94 Medicaid provided the facility offers services to both categories of  
95 residents. Any such resident who wishes to be transferred to another  
96 facility that has agreed to accept the resident may do so upon giving at  
97 least fifteen days written notice to the administrator of the facility from  
98 which the resident is to be transferred and a copy thereof to the  
99 appropriate advocate of such resident. The resident's advocate may help  
100 the resident complete all administrative procedures relating to a  
101 transfer.

102 (e) Except in an emergency or in the case of transfer to a hospital, no  
103 resident shall be transferred or discharged from a facility unless a  
104 discharge plan has been developed by the personal physician, physician  
105 assistant or advanced practice registered nurse of the resident or the  
106 medical director in conjunction with the nursing director, social worker  
107 or other health care provider. To minimize the disruptive effects of the  
108 transfer or discharge on the resident, the person responsible for  
109 developing the plan shall consider the feasibility of placement near the  
110 resident's relatives, the acceptability of the placement to the resident and  
111 the resident's guardian or conservator, if any, or the resident's legally  
112 liable relative or other responsible party, if known, and any other  
113 relevant factors that affect the resident's adjustment to the move. The  
114 plan shall contain a written evaluation of the effects of the transfer or  
115 discharge on the resident and a statement of the action taken to  
116 minimize such effects. In addition, the plan shall outline the care and

117 kinds of services that the resident shall receive upon transfer or  
118 discharge. Not less than thirty days prior to an involuntary transfer or  
119 discharge, a copy of the discharge plan shall be provided to the  
120 resident's personal physician, physician assistant or advanced practice  
121 registered nurse if the discharge plan was prepared by the medical  
122 director, to the resident and the resident's guardian or conservator, if  
123 any, or legally liable relative or other responsible party, if known.

124 (f) No resident shall be involuntarily transferred or discharged from  
125 a facility if such transfer or discharge is medically contraindicated.

126 (g) No resident shall be involuntarily transferred or discharged from  
127 a facility to a homeless shelter or to a temporary or unstable housing  
128 situation. As used in this subsection, "temporary or unstable housing  
129 situation" includes, but is not limited to, any housing (1) in a hotel or  
130 motel or similar lodging for less than thirty days, (2) in which the  
131 resident does not have a legal right of occupancy, or (3) where, in  
132 accordance with the resident's discharge plan, (A) the health needs of  
133 the resident cannot be met, or (B) the resident has not designated an  
134 available and willing caregiver, as defined in section 19a-535c.

135 [(g)] (h) The facility shall be responsible for assisting the resident in  
136 finding appropriate placement.

137 [(h)] (i) (1) Except in the case of an emergency, as provided in  
138 subdivision (4) of this subsection, upon receipt of a request for a hearing  
139 to appeal any proposed transfer or discharge, the Commissioner of  
140 Social Services or the commissioner's designee shall hold a hearing to  
141 determine whether the transfer or discharge is being effected in  
142 accordance with this section. A hearing shall be convened not less than  
143 ten, but not more than thirty days from the date of receipt of such  
144 request and a written decision made by the commissioner or the  
145 commissioner's designee not later than thirty days after the date of  
146 termination of the hearing or not later than sixty days after the date of  
147 the hearing request, whichever occurs sooner. The hearing shall be  
148 conducted in accordance with chapter 54. In each case the facility shall

149 prove by a preponderance of the evidence that it has complied with the  
150 provisions of this section. Except in the case of an emergency or in  
151 circumstances when the resident is not physically present in the facility,  
152 whenever the Commissioner of Social Services receives a request for a  
153 hearing in response to a notice of proposed transfer or discharge and  
154 such notice does not meet the requirements of subsection (c) of this  
155 section, the commissioner shall, not later than ten business days after  
156 the date of receipt of such notice from the resident or the facility, order  
157 the transfer or discharge stayed and return such notice to the facility.  
158 Upon receipt of such returned notice, the facility shall issue a revised  
159 notice that meets the requirements of subsection (c) of this section.

160 (2) The resident, the resident's guardian, conservator, legally liable  
161 relative or other responsible party shall have an opportunity to examine,  
162 during regular business hours at least three business days prior to a  
163 hearing conducted pursuant to this section, the contents of the resident's  
164 file maintained by the facility and all documents and records to be used  
165 by the commissioner or the commissioner's designee or the facility at the  
166 hearing. The facility shall have an opportunity to examine during  
167 regular business hours at least three business days prior to such a  
168 hearing, all documents and records to be used by the resident at the  
169 hearing.

170 (3) If a hearing conducted pursuant to this section involves medical  
171 issues, the commissioner or the commissioner's designee may order an  
172 independent medical assessment of the resident at the expense of the  
173 Department of Social Services that shall be made part of the hearing  
174 record.

175 (4) In an emergency the notice required pursuant to subsection (c) of  
176 this section shall be provided as soon as practicable. A resident who is  
177 transferred or discharged on an emergency basis or a resident who  
178 receives notice of such a transfer or discharge may contest the action by  
179 requesting a hearing in writing not later than twenty days after the date  
180 of receipt of notice or not later than twenty days after the date of transfer  
181 or discharge, whichever is later, unless the resident demonstrates good

182 cause for failing to request a hearing within the twenty-day period. A  
183 hearing shall be held in accordance with the requirements of this  
184 subsection not later than fifteen business days after the date of receipt  
185 of the request. The commissioner, or the commissioner's designee, shall  
186 issue a decision not later than thirty days after the date on which the  
187 hearing record is closed.

188 (5) Except in the case of a transfer or discharge effected pursuant to  
189 subdivision (4) of this subsection, (A) an involuntary transfer or  
190 discharge shall be stayed pending a decision by the commissioner or the  
191 commissioner's designee, and (B) if the commissioner or the  
192 commissioner's designee determines the transfer or discharge is being  
193 effected in accordance with this section, the facility may not transfer or  
194 discharge the resident prior to fifteen days from the date of receipt of  
195 the commissioner's decision by the resident and the resident's guardian  
196 or conservator, if any, or the resident's legally liable relative or other  
197 responsible party if known.

198 (6) If the commissioner, or the commissioner's designee, determines  
199 after a hearing held in accordance with this section that the facility has  
200 transferred or discharged a resident in violation of this section, the  
201 commissioner, or the commissioner's designee, may require the facility  
202 to readmit the resident to a bed in a semiprivate room or in a private  
203 room, if a private room is medically necessary, regardless of whether or  
204 not the resident has accepted placement in another facility pending the  
205 issuance of a hearing decision or is awaiting the availability of a bed in  
206 the facility from which the resident was transferred or discharged.

207 (7) A copy of a decision of the commissioner or the commissioner's  
208 designee shall be sent to the facility and to the resident, the resident's  
209 guardian, conservator, if any, legally liable relative or other responsible  
210 party, if known. The decision shall be deemed to have been received not  
211 later than five days after the date it was mailed, unless the facility, the  
212 resident or the resident's guardian, conservator, legally liable relative or  
213 other responsible party proves otherwise by a preponderance of the  
214 evidence. The Superior Court shall consider an appeal from a decision

215 of the Department of Social Services pursuant to this section as a  
216 privileged case in order to dispose of the case with the least possible  
217 delay.

218        [(i)] (j) A resident who receives notice from the Department of Social  
219 Services or its agent that the resident is no longer in need of the level of  
220 care provided by a facility and that, consequently, the resident's  
221 coverage for facility care will end, may request a hearing by the  
222 Commissioner of Social Services in accordance with the provisions of  
223 section 17b-60. If the resident requests a hearing prior to the date that  
224 Medicaid coverage for facility care is to end, Medicaid coverage shall  
225 continue pending the outcome of the hearing. If the resident receives a  
226 notice of denial of Medicaid coverage from the department or its agent  
227 and also receives a notice of discharge from the facility pursuant to  
228 subsection (c) of this section and the resident requests a hearing to  
229 contest each proposed action, the department may schedule one hearing  
230 at which the resident may contest both actions.

231        [(j)] (k) Whenever a facility is discharging a resident to the resident's  
232 home in the community, the discharge shall be in accordance with  
233 sections 19a-535c and 19a-535d.

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

236        (a) As used in this section, a "facility" means a residential care home,  
237 as defined in section 19a-490.

238        (b) A facility shall not transfer or discharge a resident from the facility  
239 unless (1) the transfer or discharge is necessary to meet the resident's  
240 welfare and the resident's welfare cannot be met in the facility, (2) the  
241 transfer or discharge is appropriate because the resident's health has  
242 improved sufficiently so the resident no longer needs the services  
243 provided by the facility, (3) the health or safety of individuals in the  
244 facility is endangered, (4) the resident has failed, after reasonable and  
245 appropriate notice, to pay for a stay or a requested service, at the facility  
246 or (5) the facility ceases to operate. In the case of an involuntary transfer

247 or discharge the resident and, if known, his legally liable relative,  
248 guardian or conservator shall be given a thirty-day written notification  
249 which includes the reason for the transfer or discharge and notice of the  
250 right of the resident to appeal a transfer or discharge by the facility  
251 pursuant to subsection [(d)] (e) of this section. No resident shall be  
252 involuntarily transferred or discharged from a facility if such transfer or  
253 discharge presents imminent danger of death.

254 (c) The facility shall be responsible for assisting the resident in finding  
255 appropriate placement. A discharge plan, prepared by the facility,  
256 which indicates the resident's individual needs shall accompany the  
257 patient.

258 (d) No resident shall be involuntarily transferred or discharged from  
259 a facility to a homeless shelter or to a temporary or unstable housing  
260 situation. As used in this subsection, "temporary or unstable housing  
261 situation" includes, but is not limited to, any housing (1) in a hotel or  
262 motel or similar lodging for less than thirty days, (2) in which the  
263 resident does not have a legal right of occupancy, or (3) where, in  
264 accordance with the resident's discharge plan, the health needs of the  
265 resident cannot be met.

266 [(d)] (e) (1) For transfers or discharges effected on or after October 1,  
267 1989, a resident or his legally liable relative, guardian or conservator  
268 who has been notified by a facility, pursuant to subsection (b) of this  
269 section, that he will be transferred or discharged from the facility may  
270 appeal such transfer or discharge to the Commissioner of Public Health  
271 by filing a request for a hearing with the commissioner within ten days  
272 of receipt of such notice. Upon receipt of any such request, the  
273 commissioner or his designee shall hold a hearing to determine whether  
274 the transfer or discharge is being effected in accordance with this  
275 section. Such a hearing shall be held within seven business days of  
276 receipt of such request and a determination made by the commissioner  
277 or his designee within twenty days of the termination of the hearing.  
278 The hearing shall be conducted in accordance with chapter 54.

279 (2) In an emergency the facility may request that the commissioner  
 280 make a determination as to the need for an immediate transfer or  
 281 discharge of a resident. Before making such a determination, the  
 282 commissioner shall notify the resident and, if known, his legally liable  
 283 relative, guardian or conservator. The commissioner shall issue such a  
 284 determination no later than seven days after receipt of the request for  
 285 such determination. If, as a result of such a request, the commissioner or  
 286 his designee determines that a failure to effect an immediate transfer or  
 287 discharge would endanger the health, safety or welfare of the resident  
 288 or other residents, the commissioner or his designee shall order the  
 289 immediate transfer or discharge of the resident from the facility. A  
 290 hearing shall be held in accordance with the requirements of  
 291 subdivision (1) of this subsection within seven business days of the  
 292 issuance of any determination issued pursuant to this subdivision.

293 (3) Any involuntary transfer or discharge shall be stayed pending a  
 294 determination by the commissioner or his designee. Notwithstanding  
 295 any provision of the general statutes, the determination of the  
 296 commissioner or his designee after a hearing shall be final and binding  
 297 upon all parties and not subject to any further appeal.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2022	19a-535
Sec. 2	July 1, 2022	19a-535a

**Statement of Purpose:**

To prohibit involuntary discharges from nursing homes or residential care homes, except in emergency situations, to shelters for the homeless and certain other housing.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*