§ 131D-4.8. Discharge of residents; appeals.

(a) An adult care home may initiate discharge of a resident based on any of the following reasons:

(1) The discharge is necessary to protect the welfare of the resident and the adult care home cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner.

(2) The health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the adult care home, as documented by the resident's physician, physician assistant, or nurse practitioner.

(3) The safety of the resident or other individuals in the adult care home is endangered.

(4) The health of the resident or other individuals in the adult care home is endangered, as documented by a physician, physician assistant, or nurse practitioner.

(5) The resident has failed to pay the costs of services and accommodations by the payment due date specified in the resident's contract with the adult care home, after receiving written notice of warning of discharge for failure to pay.

(6) The discharge is mandated under this Article, Article 3 of this Chapter, or rules adopted by the Medical Care Commission.

(b) Upon arrival at any adult care home, an individual must be identified to receive a discharge notice on behalf of the resident. An adult care home shall notify a resident, the resident's legal representative, and the individual identified to receive a discharge notice of its intent to initiate the discharge of the resident under subsection (a) of this section, in writing, at least 30 days before the resident is discharged. The written notice shall include (i) the reasons for the discharge, (ii) an appropriate discharge destination if known, (iii) personal medical care information relating to the resident, as required by the Department, (iv) a copy of the Adult Care Home Notice of Discharge, (v) a copy of the Adult Care Home Hearing Request Form, and (vi) other information, as required under rules adopted by the Medical Care Commission. If a discharge is initiated under subdivision (a)(1) of this section on the basis that a resident's physician requires a different level of care for the resident, the discharge is not subject to appeal for that specific reason unless there is a documented conflict between two or more of the resident's physicians regarding the resident's appropriate level of care but remains subject to appeal on all other available grounds.

(c) During any appeal of a discharge to the Hearing Unit, if the Hearing Unit determines that the discharge destination identified in the written notice required by subsection (b) of this section does not include an appropriate discharge destination, the Department shall not prohibit discharge solely for that reason, provided that any discharge shall comply with subsection (e) of this section.

(d) If an adult care home resident or the resident's legal representative elects to appeal a discharge initiated by the adult care home, the appeal shall be to the Hearing Unit. The Hearing Unit shall decide all appeals pertaining to the discharge of adult care home residents. The decision of the Hearing Unit is the final agency decision. Any person aggrieved by a decision of the Hearing Unit pertaining to an adult care home resident discharge is entitled to immediate judicial review of the decision in Wake County Superior Court or in the superior court of the county where the person resides. The appellant shall file a petition for judicial review not later than 30 days after the person is served with a written copy of the Hearing Unit decision. Within 10 days after the petition for judicial review is filed with the superior court, the appellant shall serve copies of the petition by personal service or certified mail upon all parties who were parties of record to the appeal to the Hearing Unit. Other parties to the appeal to the Hearing Unit may file a response to the petition within 30 days after service. The Department as the decision maker in the

appeal to the Hearing Unit is not a party of record. Within 30 days after receipt of a petition for judicial review, the Department shall transmit to the superior court the original or a certified copy of the official record in the appeal to the Hearing Unit, together with the final agency decision. In reviewing the Department's final decision, the superior court shall review the official record, de novo, and make findings of fact and conclusions of law. The decision of the Department remains in effect during the pendency of review by the superior court and any further review in the appellate courts.

(e) The facility shall convene the adult care home resident discharge team to assist with finding a placement for a resident if, at the time of notice of discharge, the destination is unknown, or the destination is not appropriate for the resident. The facility is not solely responsible for securing an appropriate discharge destination. Local management entities shall take the lead role for the discharge destination for those residents whose primary unmet needs are related to mental health, developmental disabilities, or substance abuse and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Use Services. Local departments of social services shall take the lead role for those residents whose primary unmet needs are related to health, including Alzheimer's disease and other forms of dementia, welfare, abuse, or neglect. When the adult care home resident discharge team is convened at the request of a facility, the adult care home resident discharge team shall consult with that facility, as well as the resident receiving the discharge notice and that resident's legal representative. Upon the request of the resident or the resident's legal representative, the Regional Long-Term Care Ombudsman shall serve as a member of the adult care home resident discharge team. The facility requesting the adult care home resident discharge team to be convened shall notify the resident and the resident's legal representative of this right. The adult care home resident discharge team shall provide the Hearing Unit with the discharge location at or before the discharge hearing.

(f) Meetings of the adult care home resident discharge team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. All information and records acquired by the adult care home resident discharge team in the exercise of its duties are confidential unless all parties give written consent to the release of that information.

(g) If a discharge is under appeal to the Hearing Unit, the resident shall remain in the facility and shall not be subject to discharge until issuance of the decision of the Hearing Unit with the following exceptions:

(1) The discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant, or nurse practitioner;

(2) The safety of other individuals in the facility is endangered; [or]

(3) The health of other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner. (2011-272, s. 4; 2023-65, s. 5.2(b).)