STATE OF NEW YORK

3058

2021-2022 Regular Sessions

IN SENATE

January 27, 2021

Introduced by Sens. RIVERA, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing requirements for the transfer, discharge and voluntary discharge from residential health care facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 2803-z to read as follows:

§ 2803-z. Transfer, discharge and voluntary discharge requirements for residential health care facilities. 1. (a) No residential health care facility shall transfer or discharge a resident unless such transfer or discharge is necessary for the resident's health, safety, or welfare, such transfer or discharge is necessary to preserve the health, safety, or welfare of other residents, the facility discontinues operation or the resident has failed to pay or make arrangements for payment for a stay at the facility, unless stated otherwise by this section.

(b) Prior to a facility initiating a transfer or discharge of a resident, the facility shall use its best efforts, including compliance with applicable federal and state regulations, to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance. For purposes of this section, "temporary housing assistance" shall include but not be limited to a family shelter, a shelter for adults, a hotel, an emergency apartment, a domestic violence shelter, or a safe house for refugees. No residential health care facility shall initiate a transfer or discharge of a resident to the home of another individual without the written consent of the resident and the other individual and the other individual has received and acknowledged the comprehensive discharge plan to address the resident's needs.

(c) At least thirty days prior to a facility-initiated transfer or discharge, the residential health care facility shall provide written

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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notification of the transfer or discharge to the resident, the resident's lawful representative, if any, a family member of the resident, if known, and the long-term care ombudsman under section two hundred eighteen of the elder law. The notification shall be in a language and manner that is understandable to the resident and shall state the basis for the transfer or discharge, which shall be recorded in the resident's clinical record.

(d) A resident may be transferred or discharged if the facility is unable to meet the needs of the resident. In that case, the resident's clinical record shall document (i) the specific need or needs that cannot be met, (ii) the facility's attempts to meet the resident's needs, and (iii) the services available at the receiving facility.

(e) When a resident is being transferred or discharged because the resident cannot be cared for safely, or is a danger to others, prior notice may be provided less than thirty days prior to the transfer or discharge but shall be provided as soon as practicable prior to transfer or discharge. The facility shall document in the resident's clinical record the risks to the resident or others if the resident were to remain in the facility.

(f) A residential health care facility may transfer or discharge a resident because the resident does not need residential health care facility services.

2. Where the resident's transfer or discharge is initiated by the resident and the clinical record notes that a family member or designated representative has requested notification, and such notification is otherwise lawful, the residential health care facility shall notify the family member or designated representative of the resident's voluntary transfer or discharge as soon as practicable after the resident initiates the voluntary transfer or discharge process and in no event more than forty-eight hours thereafter. The notice shall not be provided if the resident specifically requests that the family member or designated representative not be notified.

3. A residential health care facility shall not compel or attempt to compel an individual to voluntarily transfer or discharge from the facility.

§ 2. Subdivision 3 of section 2803-c of the public health law is amended by adding a new paragraph r to read as follows:

r. Every patient shall have the right to remain in care unless the patient is appropriately discharged or transferred in accordance with section two thousand eight hundred three-z of this article and a residential health care facility shall not attempt to compel or retaliate against an individual that chooses to remain in care.

§ 3. This act shall take effect immediately.