

**9050.0220 INVOLUNTARY DISCHARGE PROCEDURES.**

Subpart 1. **Generally, recommendations.** Involuntary discharge for a reason specified in part 9050.0200, subpart 3, item C, must be based on the recommendation of the utilization review committee. Involuntary discharge under part 9050.0200, subpart 3, item A, F, or G, must be based on the recommendation of the facility financial staff or social services staff.

Subp. 2. **Notice, review of recommendation.** A notice for involuntary discharge must be issued by the administrator of the facility operated by the commissioner of veterans affairs or administrator's designee if, after review of the recommendations and documentation from the utilization review committee or Management and Budget Department, the administrator agrees with the recommendations.

Subp. 3. **Reconsideration.** A resident or the resident's legal representative may request a reconsideration of the notice of involuntary discharge. The request must be made in writing within ten days of receipt of the notice of involuntary discharge. Reconsideration must be before the administrator of the facility operated by the commissioner of veterans affairs under the procedures in subpart 4. The resident may waive the reconsideration hearing and the resident may proceed directly to an appeal. The appeal must be made in writing within ten days of receipt of the notice of involuntary discharge. Any such appeal must otherwise follow the procedures in subpart 6.

Subp. 4. **Reconsideration procedures, scheduling, representation.**

A. A resident may be represented at a reconsideration under this part by an attorney, the resident, an advocate from the Office of the Ombudsman for Older Minnesotans, or other person of the resident's own choosing.

B. A resident or the resident's representative may question witnesses and present reasons why the resident should not be discharged.

C. The administrator shall record the proceedings electronically or stenographically. The cost must be borne by the facility.

D. The time for the reconsideration proceeding must be set by the administrator. The time may be extended for the resident for good cause shown. For purposes of this item, good cause exists when a resident cannot attend because of:

- (1) illness or injury of the resident;
- (2) illness, injury, or death of a member of the resident's family that requires the resident's presence during the time the review is scheduled;
- (3) an inability to obtain necessary assistance;

(4) employment, school, or employment and training service obligations that are scheduled during the reconsideration and that cannot be changed to allow the resident's participation;

(5) a judicial proceeding that requires the resident's presence in court during the hours when the reconsideration is scheduled; or

(6) a nonmedical emergency that requires the resident's presence at a different location during the hours when the reconsideration is scheduled. "Emergency" under this subitem means a sudden unexpected occurrence or situation of a serious or urgent nature that requires immediate action.

Subp. 5. **Administrator's decision and order.** The administrator, within ten days after the reconsideration proceeding and on review of the record, shall review the question of discharge and issue an administrator's order supporting or reversing the involuntary discharge notice and state the reasons for the involuntary discharge.

Subp. 6. **Appeals process.** A resident or the resident's legal representative may appeal an administrator's discharge or transfer order. A resident or the resident's legal representative has ten working days after issuance of the administrator's discharge or transfer order to request an administrative appeal.

If a resident is voluntarily or involuntarily discharged from a facility while an appeal is pending and fails to notify the administrator in writing as to whether or not the appeal is to continue, the steps in items A to D must be taken.

A. The appeal must be placed on hold.

B. The administrator shall send the resident a written notice via certified mail to the resident's forwarding address informing the resident that if no written response is received within 30 days of the date of the letter, the appeal must be dismissed. If the resident wishes the appeal to proceed, the resident must notify the administrator in writing.

C. If the resident has left no forwarding address, the facility shall document its good faith efforts to attempt to locate the resident.

D. If the resident fails to respond to the certified letter or cannot be located despite good faith efforts, the appeal must be dismissed 30 days after the certified letter has been sent or the location efforts were commenced. If the resident notifies the facility of a desire to continue with the appeal, the appeal hearing must be scheduled as soon as feasible for all parties.

Appeals must be in accordance with contested case procedures under the Administrative Procedure Act, Minnesota Statutes, section 14.48 et. seq., until rules are adopted under Minnesota Statutes, section 144A.135, by the commissioner of health. Once the rules adopted under Minnesota Statutes, section 144A.135, have taken effect, all

appeals must be in accordance with those rules. The administrator shall inform the resident of the rules that govern the appeal in the notice provided under part 9050.0100, subpart 2, or 9050.0200, subpart 4. The final discharge order shall be issued by the commissioner of veterans affairs, after review of the entire record including the recommendations of the administrative law judge. A final discharge order issued by the commissioner of veterans affairs following the Office of Administrative Hearings' review remains in effect pending judicial review under Minnesota Statutes, section 14.63, et. seq. Notwithstanding this provision, the administrator may, for good cause shown, waive imposition of the discharge order until all appeals have been concluded.

Nothing in this part may be construed to limit, change, or restrict other appeal or review procedures available to a resident under law.

**Statutory Authority:** *MS s 198.003*

**History:** *14 SR 2355; 16 SR 1801; 18 SR 2254; 20 SR 2095; 28 SR 1251; L 2008 c 297 art 2 s 29; L 2009 c 101 art 2 s 109*

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