

## **How to Find Nursing Home Discharge Final Orders**

The Department of Children and Families' (DCF) Office of Appeal Hearings is responsible for conducting administrative fair hearings for nursing home residents who are appealing a discharge action. The administrative hearing officer's written decision comes in the form of a Final Order. DCF has chosen to post these final orders on the State of Florida Division of Administrative Hearings (DOAH) website. Nursing home discharge final orders can be found using the Florida Agency Indexed Orders Search portal (<https://www.doah.state.fl.us/FLAIO/>) as they are agency orders which have not been referred to DOAH.

To locate these final orders, select "Department of Children and Families" under the "Agency" dropdown menu. The relevant "Subject" will depend on the year of the final order. To view final orders filed between 2015 and 2018, select "Public Assistance- Other." The oldest final order available on DOAH was filed September 14, 2015. For final orders filed in 2019, the appropriate subject is "Public Assistance- Medicaid." All nursing home discharge final orders are distinguished by an "N" in the case number after a two digit number corresponding to the year the hearing was requested. DCF has recently created a new "Subject" labeled "Nursing Home Discharge," which includes the nursing home discharge final orders filed between 2020 up to the present. As of this date, the most recently published final order was filed June 15, 2022.

## **Summary of Final Orders and Rate of Success<sup>1</sup>**

There have been 125 nursing home discharge final orders filed between 2018 and June 15, 2022, posted on the DOAH website. This includes: 21 final orders filed in 2018, 40 in 2019, 27 in 2020, 23 in 2021, and 14 for 2022 as of this date.

Of these 125 final orders, the hearing officer granted the resident petitioner's appeal 32 times. This reflects a 25.6% success rate for those residents who have appealed.

## **Reasons Given for Discharge**

- The resident has failed, after reasonable and appropriate notice, to pay for stay at the facility: 57 (45.6%)
- The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident: 33 (26.4%),
- The resident's needs cannot be met in the facility: 28 (22.4%)
- The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility: 18 (14.4%)

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<sup>1</sup> Hearings between 2015-2017 are not included in the summary. A full report of the data underlying this summary can be found in Attachment 1, 2018-2022 Nursing Home Discharge Hearings.

- The health of individuals in the facility would be endangered: 11 (8.8%)
- The facility ceases to operate: 1 (0.8%)

Note: In 23 instances, the nursing facility selected more than one reason on the discharge notice.

### **Facilities Often Raise New Reasons for Discharge at the Hearings**

It is of note that in some hearings the facility has raised different or additional reasons for discharging the resident than those marked on the discharge notice. In all but one of these instances, the hearing officer did not make a decision on a reason that was not marked on the notice, *see* 18N-00057. In that one instance, the officer affirmed the eviction for the reason that the safety of others at the facility was endangered (not the reason marked on the notice) because she found that the facility had provided sufficient evidence to support this exception to the 30-day notice requirement.

### **Reasons for Successful Appeals: Noncompliance with Notice and/or Burden of Proof Requirements**

There were three other notable instances in which the nursing facility did not comply with the requirement that the discharge notice mark the reason(s) for discharge. In one instance, the nursing facility provided a reason on the discharge notice that is not permissible under 42 C.F.R. § 483.15. Another nursing facility provided a resident with a discharge notice with no reason selected or provided. Lastly, one nursing facility did not provide any discharge notice when it would not readmit a resident who was temporarily transferred. The residents' appeals were granted in each of these three circumstances.

In other successful appeals, the notices given to residents were defective because they did not include a physician's signature or order as required or they were not given to the resident 30 days prior to the proposed discharge. Residents also had their appeals granted for the following reasons:

- The facility did not provide any documentation or medical records to support the discharge reason
- The resident's medical records were not well-documented
- The basis for the discharge was actually a contentious relationship with a family member
- The facility did not provide specific dates or times for the alleged safety violations
- No testimony was provided to support allegations
- The facility did not provide evidence that a payment arrangement was discussed or that the resident was properly billed

**Representation: Few Residents Were Represented by an Attorney or Ombudsman & Those with Representation Had a Much Higher Success Rate**

Overwhelmingly, these 125 residents have either represented themselves as pro se petitioners (51) or have been represented by a family member (52). Only four residents were represented by an attorney and six were represented by an ombudsman. In two instances, both a family member and an ombudsman represented the resident during the hearing. As many of these final orders were heavily redacted, some heavily, There were two orders which only indicated that the resident had a “representative,” one that listed “health care proxy” as the representative, one that listed “power of attorney”, and nine where it is completely unclear whether there was any representation for the petitioner.

Eleven (11) of the pro se residents successfully appealed their discharge notices: a 21.6% success rate. Residents represented by their families were slightly more successful: 25-26.9% success rate. Two of the four residents represented by an attorney had their appeals granted, and three ombudsman-represented residents successfully appealed (one ombudsman was co-representative with the resident’s family member).<sup>2</sup>

Attachment 1

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<sup>2</sup> These numbers may be slightly different given the three instances where the appeal was affirmed but the representation is unknown due to redaction.

## 2018-2022 Nursing Home Discharge Hearings

### 2018 (21 total):

- 8/21 successful appeals (38%)
- Represented by attorney (0), represented by ombudsman (1), represented by other advocate (0), represented by family (13), pro se (5), Unknown–redacted (2)
  - 1 pro se resident, 0 attorney-represented resident, 5 family-represented residents, 1 ombudsman-represented resident were successful (other 1 had redacted representation)
- Reason for discharge: Failure to pay (6), Needs cannot be met (7), Health has improved (3), Safety of others endangered (5), Health of others endangered (1), No notice (1)
  - 3 had multiple reasons for discharge
- 9 orders were not redacted at all (shows resident’s name, health info, facility, etc.)

### 2019 (40 total):

- 11/40 successful appeals (27.5%)
- Represented by attorney (1), represented by ombudsman (1), represented by other advocate (0), represented by family (15), pro se (15), “Representative”–redacted (2), Unknown–redacted (7)
  - One resident was represented by ombudsman and wife
  - 5 pro se residents, 1 attorney-represent resident, 2 family-represented residents, 1 family & ombudsman-represented resident were successful (other 2 had redacted representation)
- Reason for discharge: Failure to pay (13), Needs cannot be met (10), Health has improved (6), Safety of others endangered (15), Health of others endangered (3), Reason not marked on notice (1- for health has improved)
  - 7 had multiple reasons for discharge
  - One notice had the wrong reason marked (needs cannot be met) but eviction was still affirmed eviction for “real” reason of safety of others endangered (case counted under needs cannot be met)

### 2020 (27 total):

- 5/27 successful appeals (18.5%)
- Represented by attorney (3), represented by ombudsman (1), represented by other advocate (1), represented by family (9), pro se (13), “Power of attorney” (1)
  - One resident was represented by ombudsman manager and family
  - 2 pro se residents, 1 attorney-represent resident, 2 family-represented residents were successful

- Reason for discharge: Failure to pay (16), Needs cannot be met (6), Health has improved (5), Safety of others endangered (5), Health of others endangered (4), Non- Approved reason (1)
  - 9 had multiple reasons for discharge

2021 (23 total):

- 5/23 successful appeals (21.7%)
- Represented by attorney (0), represented by ombudsman (3), represented by other advocate (0), represented by family (8), pro se (12)
  - 2 pro se residents, 2 family-represented residents, 1 ombudsman-represented resident were successful
- Reason for discharge: Failure to pay (13), Needs cannot be met (2), Health has improved (4), Safety of others endangered (7), Health of others endangered (3)
  - 4 had multiple reasons for discharge

2022 (14 total for now):

- 3/14 successful appeals (21.4%)
- Represented by attorney (0), represented by ombudsman (0), represented by other advocate (0), represented by family (7), pro se (6), “Health care proxy” (1)
  - 1 pro se resident, 2 family-represented residents were successful
- Reason for discharge: Failure to pay (9), Needs cannot be met (3), Health has improved (0), Safety of others endangered (1), Health of others endangered (0), the facility ceases to operate (1)

Overall 2018-current (125 total):

- **32/125 successful appeals (25.6%)**
- **Represented by attorney (4), represented by ombudsman (6)\***, represented by other advocate (1), represented by family (52)\*, pro se (51), “Health care proxy” (1), “Power of attorney (1), “Representative”–redacted (2), Unknown–redacted (9)
  - \*Two residents were represented by an ombudsman and a family member
  - 11 pro se residents, 2 attorney-represented resident, 13 family-represented residents, 2 ombudsman-represented, 1 family & ombudsman-represented resident were successful (other 3 had redacted representation)
- Reason for discharge: **Failure to pay (57)**, Needs cannot be met (28), Health has improved (18), Safety of others endangered (33), Health of others endangered (11), Facility ceases to operate (1); Non-approved reason (1), Not marked on notice (1), No notice (1)
  - 23 had multiple reasons for discharge
  - **Failure to pay (45.6%)**, Safety of others endangered (26.4%), Needs cannot be met (22.4%), Health has improved (14.4%), Health of others endangered (8.8%), Facility ceases to operate (.8%)