ADMINISTRATION.

...(2) Each home shall be operated in accordance with policies approved by the Department. These policies shall include but not be limited to those governing admissions, transfers, discharges...

PROFESSIONAL SERVICE.

(4)...When a patient develops a condition requiring care of a level or type not provided at that home, the administration shall arrange for transfer of the patient to another home, hospital or home health agency which has a permit or is certified to provide such care or shall make satisfactory arrangements for the needed care if the condition is to be of short duration.

LEGAL RIGHTS OF NURSING HOME RESIDENTS

[PAIMPHLET, PREPARED BY THE ELDER LAW COMMITTEE OF THE YOUNG LAWYERS DIVISION OF THE STATE BAR OF GEORGIA]

Duration of Stay Agreements
Nursing homes in Georgia are not prohibited from giving preference to an applicant who is able to pay privately over an applicant who is Medicaid eligible. However, federal law prohibits nursing homes from:

requiring at admission that the resident waive his or her rights to Medicare or Medicaid;
requiring oral or written promises that residents are not eligible for Medicaid or Medicare or that they will not apply for those benefits; and
requiring a resident to pay the nursing home from private funds for a given period of time before applying for Medicaid.

It is not true that once Medicare benefits are exhausted, the resident must leave the nursing home. Federal law protects residents from discrimination based on method of payment. Nursing homes must inform each resident who is entitled to Medicaid benefits what services are paid for by Medicaid and how a resident can apply for Medicaid. Such information must be provided to the resident in writing at the time of admission or at the time a resident becomes eligible for Medicaid.
Transfer and Discharge
A nursing home may transfer or discharge a resident against his or her wishes only if: (1) the transfer or discharge is necessary for the resident’s welfare and the failure to do so will result in injury or illness to the resident or others; (2) there has been non-payment of allowable charges; (3) the resident no longer requires the level of care currently being provided; and (4) the resident’s needs cannot be met in the facility. Changing from private pay status to Medicaid does not constitute non-payment of allowable charges in a Medicaid participating facility. If a resident is Medicaid eligible, Medicaid will retroactively reimburse the nursing home for up to three months prior to the month of application. An admission agreement that allows for involuntary discharge for becoming Medicaid eligible is illegal and unenforceable. So long as the discharge is not an emergency, a nursing home must provide a written notice to the resident, the resident’s representative and the resident’s physician 30 days prior to any proposed transfer or discharge regardless of the admission contract terms. The notice must include:

1. the reason for transfer or discharge
2. the effective date of transfer or discharge;
3. the location to which the resident is being transferred or discharged;
4. a statement that the resident has the right to appeal the proposed action to the state;
5. the name, address and telephone number of the state long-term care ombudsman; and
6. for residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals.

If you receive a notice of transfer or discharge and you disagree, you should immediately consult with one of the resources listed at the end of this pamphlet. If you disagree with the transfer or discharge, it is important that you request a hearing immediately. This will protect your right to continue to receive services while the appeal is pending. State regulations require that, unless an emergency situation exists, all nursing homes must pursue all reasonable alternatives prior to initiating transfer or discharge of a resident.

Bed Hold Policies
Nursing facilities that participate in the Medicaid program must provide written notice of the state bed hold policy to the resident and family member prior to a hospital transfer or therapeutic leave. In Georgia, Medicaid will pay for a "hold" on the resident’s bed during his or her absence for up to seven days. Family members or others may arrange for the facility to hold the bed for a longer period of time. The facility may charge a mutually agreeable rate not to exceed the total allowable per diem billing rate that the facility would have been paid had the resident been in the facility.

Requiring Payment for Services Included in Medicaid or Medicare Programs
For residents who are covered by Medicare or Medicaid, these programs cover the expenses included in the approved reimbursement rate for that facility. These covered goods and services must be provided to the resident at no additional charge. These services


include, but are not limited to: nursing services; dietary services; activities programs; room/bed maintenance services; routine personal hygiene items and services; and medically related social services. If the admission agreement requires payment for the services mentioned above, it is unenforceable. Any list of covered services in the admissions contract should be carefully reviewed. Nursing homes may offer additional services not included in the Medicaid or Medicare reimbursement rate provided that the facility gives the resident proper notice of the availability and cost. The facility is not permitted to require payment for additional services as a condition to admission or continued stay in the facility.

Residents' Rights
Georgia law provides for the rights of residents concerning admission, transfer, discharge and care in the facility, and provides remedies for residents when those rights have been violated. These rights include:

...the right to adequate and appropriate care and services without discrimination in the quality of service on the basis of age, gender, race, disability, religion, sexual orientation, national origin, marital status or source of payment for services;

...the right to voluntarily transfer or discharge oneself...

BILL OF RIGHTS
290-5-39-.03 Notification of Rights.

(1) At or before being admitted to a facility, each resident and guardian, or representative if there is no guardian, must be given a copy of the written explanation of the resident's rights, grievance procedure and enforcement procedures. A staff member must also orally explain to such persons the resident’s rights, grievance procedures and enforcement procedures. Written acknowledgement of this written and oral explanation must be given by the resident, or in the case of a resident unable to give a written acknowledgement, by the resident's guardian or representative if there is no guardian. Such written acknowledgement shall be kept in the resident’s file.

(2) At the time of admission to a facility, each resident, guardian, or representative must be provided with the following information in writing:

(a) The basic daily or monthly rate of the facility for the level of care to be received by the resident;
(b) A list of the services of the facility. Such list must show which services are offered as a part of the daily rate and which services are offered on an as-needed basis along with the related charges for such services. Such list must also show which services are not covered under Medicare or Medicaid programs and for which there are extra charges...


Administrative History. Original Rule entitled "Notification of Rights" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.11 TRANSFER AND DISCHARGE.

(1) In an emergency situation where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve, the facility may involuntarily transfer the resident to another health facility. The person in charge shall document in the resident's file the reasons for such emergency transfer and shall immediately inform the resident, guardian and other persons of the resident's choice regarding such transfer and the place where the resident is to be transferred.

(2) In all other situations an involuntary transfer or discharge must be in accordance with any of the following reasons and procedures and only after all other reasonable alternatives to transfer have been exhausted:

(a) The resident's physician or, if unavailable, another physician determines that failure to transfer the resident will result in injury or illness to the resident or others. The resident's physician shall be kept informed of actions taken. The attending physician must document that determination in the resident's record. If the basis for the transfer or discharge is the threat of injury or illness to the resident only, the resident cannot be transferred or discharged unless the physician documents in the resident's medical record that such transfer or discharge is not expected to endanger the resident to a greater extent than remaining in the facility; or

(b) The facility does not participate in, or voluntarily or involuntarily ceases to operate or
participate in the program which reimburses for the resident's care. In the event that a facility voluntarily or involuntarily ceases to operate or participate in the program which reimburses for the resident's care and proposes to transfer or discharge a resident because of that fact, the facility must cooperate fully with and take all reasonable directives from the State Medicaid Agency and the Health Care Financing Administration Regional Office in the implementation of any transfer planning and transfer counseling conducted by these agencies; or

(c) Nonpayment of allowable fees has occurred. When a resident has been converted from full or private pay status to Medicaid eligibility due to exhaustion of personal financial resources, nonpayment of allowable fees has not occurred so long as the facility participates in the Medicaid program. Similarly, conversion from Medicare/Medicaid eligibility status does not constitute nonpayment of allowable fees; or

(d) The findings of a Medicare or Medicaid medical necessity review determine that the resident no longer requires the level of care presently being provided, subject to the right of the resident to any appeal procedure available to challenge the determination of medical necessity review. Where space permits, the resident must be given the option of staying at the facility, if the facility is certified to provide the new level of care.

(3) The facility must give written notice to the resident, guardian or representative, if there is no guardian, and the resident's physician at least 30 days before any proposed transfer or discharge is made in accordance with subsections (2)(a), (2)(b), or (2)(c) of this rule. The written notice must contain the following information: the reasons for the proposed transfer or discharge; the effective date of the proposed transfer or discharge; the location or other facility to which the facility proposes to transfer or discharge the resident; and notice of the right to a hearing pursuant to the Georgia Administrative Procedure Act and Section .15 of these rules and regulations, and of the right to representation by legal counsel. If the resident so desires, the facility shall also send a
copy of such notice to the community ombudsman, or state ombudsman if there is no community ombudsman.

(4) If two residents are married and the facility proposes to transfer one spouse to another facility at a similar level of care, notice must be given to the other spouse of the right to be transferred to the same facility if the other spouse makes a request to that facility in writing. Married residents must be transferred on the same day, pending availability of accommodations. If also available, that facility shall place both residents in the same room if the residents so desire.

(5) In the event of an involuntary transfer pursuant to subsections (2)(a), (2)(b), or (2)(c) of this rule, the facility must assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge by developing a plan designed to minimize any transfer stress to the resident. Such plan shall include counseling the resident, guardian, or representative, regarding available community resources and informing the appropriate state or social service organizations, including, but not limited to, the community or state long-term care ombudsman and assisting in arranging for the transfer.

(6) In the event that the facility proposes an involuntary transfer of the resident to another bed in the same facility, the resident and guardian shall receive 15 days written notice prior to such change.

(7) A resident shall be voluntarily discharged from a facility when the resident or guardian gives the person in charge notice of the resident’s intention to be discharged and the expected date of departure. In the case of a resident without a guardian, the facility may not require that the resident be "signed out" or authorized to be discharged by any person or agency other than the resident. Notice of the resident’s or guardian’s intention to be discharged and the expected and actual dates of departure shall be documented in the resident’s record. If the resident appears to be capable of living independently of the
facility, upon such discharge, the facility is relieved of any further responsibility for the resident’s care, safety, or well-being.

(8) If a resident being voluntarily discharged into the community appears to be incapable of living independently of the facility, in addition to the requirements under section (7) of this rule, the facility shall also do the following:

(a) Notify the County Director of the Department of Family and Children Services in order to obtain social or protective services for the resident immediately after the facility receives notice of the resident’s intention to be discharged;

(b) Document such notice to the county director of the Department of Family and Children Services in the resident’s record along with the resident’s notice of intention to be discharged and the expected and actual dates of departure;

(c) Upon notice to the county director of the Department of Family and Children Services and upon actual discharge of the resident, the facility shall be relieved of any further responsibility for the resident’s care, safety, or well-being.

(9) Each resident transferred from a facility to a hospital, other health care facility, or trial alternative living placement shall have the right to return to the facility immediately upon discharge from the hospital, other health care facility or upon termination of the trial living placement, provided that the resident has continued to pay the facility or payment on behalf of the resident by another person or agency has been provided for the period of the resident's absence. If payment is provided for the period of absence, the facility shall continue the same room assignment for such resident. In cases of nonpayment to the facility during such absence, a resident who requests to return to a facility from a hospital shall be admitted to the facility to the first bed available, with priority over any existing waiting list.

(10) Whenever allowed by the resident's health condition, a resident shall be provided treatment and care, rehabilitative services, and assistance by the facility to prepare the
resident to return to the resident's home or other living situation less restrictive than the facility. Upon the request of the resident, guardian, or representative, the facility shall provide him with information regarding available resources and inform him of the appropriate state or social service organizations.


Administrative History. Original Rule entitled "Transfer and Discharge" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.13 NONDISCRIMINATION.

...(2) A facility shall not discriminate in the provision of a service to a resident based upon the source of payment for the service.


Administrative History. Original Rule entitled "Nondiscrimination" was filed on February 5, 1982; effective February 25, 1982.