



RIGHT TO COURT EVICTION PROCESS FOR RESIDENTS OF FREE-STANDING RESIDENTIAL HEALTH CARE FACILITIES (RHCFs)

Free-Standing Residential Health Care Facilities

- Not affiliated with hospitals or other licensed health care facilities.
- Can be single or multiple dwellings, public or private, profit or nonprofit, operated by an individual, corporation, society or association.
- Must furnish food and shelter to four or more persons 18 years of age or older who are unrelated to the proprietor.
- Must also provide dietary services, recreational activities, supervision of self-administration of medications, assistance in ADLs, and assistance in obtaining health services.
- Do not provide skilled nursing care except in emergencies or during temporary illness for one week or less.
- Excludes Community Residences for the developmentally disabled, state-operated facilities, and certain other privately operated facilities.
- Free-Standing RHCF's are subject to the authority of DCA (DOH has jurisdiction over RHCF's affiliated with hospitals and other healthcare facilities).
- Similar to Class C Boarding homes.

Some History

- Prior to 2005, Free-Standing RHCF's were under the jurisdiction of the DOH just as hospital affiliated RHCF's were.
- Reorganization in 2005 by then acting Governor Cody to transfer Free-Standing RHCF's from DOH's jurisdiction to DCA's jurisdiction since the state recognized that Free-Standing RHCF's were akin to Boarding Homes (Class C) since they serve "similar populations" and "provide roughly equivalent levels of service". It was therefore determined that DCA should take over the licensing and monitoring of these facilities, as well.
- However, despite this recognition and reorganization, there remained a big difference in one important aspect – discharge and eviction.

PRIOR LAW

- Prior to the new law, residents of free-standing residential health care facilities could be involuntarily "discharged" on 30 days written notice from the operator of the RHCF.
- The operator of the RHCF could discharge a resident for grounds set forth in their written policies and procedures.
- The decision for the involuntary discharge was solely made by the operator.
- The resident could appeal the decision to the operator, but the removal was entirely in the hands of the operator.
- In certain situations, residents could be discharged prior to 30 days without notice.
- This was in contrast to Boarding Home Residents who could only be evicted through the Courts, pursuant to the Rooming and Boarding House Act, which gives residents of Boarding Homes the same rights as any other tenant in the State of NJ.

Attempts to Change the Law

- In 2007, CHLP filed a Petition for Rule-Making with DCA arguing that residents of free-standing RHCF's should have the same "due process" rights to eviction as residents of boarding homes since they are similarly situated and there has finally been formal recognition by the state given the reorganization, and requesting that they amend the regulations.
- DCA issued a decision stating that because of certain language in the Rooming and Boarding House Act which states that boarding home residents have a right to "protection from ... eviction without due cause" and similar language was not included in the RHCF statute, DCA concluded that it had no statutory authority to amend the RHCF regulations to give RHCF residents the same rights to eviction.
- A statutory change was required.

EFFECTIVE SEPTEMBER 13, 2017, THE LAW GOVERNING DISCHARGES FROM RESIDENTIAL HEALTHCARE FACILITIES CHANGED

- NJSA 30:11A-3(d) was amended to provide that RHCF residents cannot be removed (evicted) from their homes except where the facility operator has a "good cause" grounds for removal AND follows the procedural requirements of the court eviction process applicable to all residential tenants in New Jersey.
- The "good cause grounds for removal" and the "court process" for residents of residential health care facilities (RHCF) are now governed by the "Anti-Eviction Act", NJSA 2A: 18-61.1. et. seq.
- The "Anti Eviction Act" provides that residential tenants – and now also residents of an RHCF - cannot be evicted unless the operator establishes a "good cause grounds for removal" through the court eviction process.

Why is This New Law Important to You as a Community Mental Health Provider?

- Population of RHCFS – Many are seriously mentally ill, highly medicated, and vulnerable individuals.
- Social Determinants of Health – Risk of losing housing will affect their engagement in treatment and overall health.
- We need support from our community partners to engage residents and try to identify any possible issues they are having at the facility or any risk of being evicted.
- Let's take advantage of their new legal rights to ensure that they are protected.

EVICITION IS LIMITED TO "GOOD CAUSE GROUNDS FOR REMOVAL" LISTED IN NJSA 2A:18-61.1

- There are 18 "good cause" grounds for removal (eviction) listed as "a" through "r" in the Anti Eviction Act.
- Some of the most commonly used "good cause grounds" for eviction are:
 - a. nonpayment of rent
 - b. disorderly conduct
 - c. damage and destruction to the premises
 - d. violation of rules and regulations
- Almost all of the "good cause grounds" require the operator to provide some advance written notice prior to instituting an action for eviction.

NO ADVANCE NOTICE REQUIRED FOR EVICTION DUE TO NON-PAYMENT OF RENT

- The operator does not have to give any advance written notice before filing an eviction action for non-payment of rent.
- A resident can avoid eviction for nonpayment of rent by paying the outstanding rent at any time - up to and including the day of court.

MOST GROUNDS FOR REMOVAL (EVICTION) REQUIRE THE RHCF OPERATOR TO PROVIDE EITHER ONE OR TWO ADVANCE NOTICES IN ORDER TO TERMINATE THE TENANCY

- Some of the "good cause grounds" for removal require the operator to provide a resident with a written warning notice called a "NOTICE TO CEASE."
- Except for nonpayment of rent, all of the "good cause grounds" for removal require the operator to provide a resident with a written notice terminating the residency called a "NOTICE TO QUIT."

REQUIREMENTS OF A NOTICE TO CEASE

- A Notice to Cease is a warning notice.
- A Notice to Cease must explain to the resident how they are violating the terms of their residency.
- The Notice to Cease must give the resident an opportunity to correct the complained of behavior.
- The Notice to Cease warns the resident that if they don't correct the behavior they may be evicted.
- NOT ALL "GOOD CAUSE GROUNDS" FOR REMOVAL REQUIRE A WARNING NOTICE OR NOTICE TO CEASE.

EXAMPLE WHERE A "NOTICE TO CEASE," OR WARNING NOTICE, IS REQUIRED: DISORDERLY CONDUCT

- A resident can be evicted if - after receiving a written Notice to Cease - the resident continues to engage in conduct so disorderly that it disturbs the peace and quiet of the other residents.
- The Notice to Cease must describe how and when the resident was disorderly.
- The Notice to Cease must tell the resident that if they do not stop the disorderly behavior, the operator will terminate the tenancy.
- The resident must be given a chance to stop the complained of behavior.
- The operator cannot terminate the residency on that basis unless the resident continues to be disorderly after receiving the Notice to Cease.
- If the resident continues the disorderly behavior, the operator can issue a written "Notice to Quit" terminating the tenancy.
- The resident can still try to "cure" or "correct" their behavior even after receiving a "Notice to Quit."
- Even if the operator does file for eviction, the resident may have a defense to an eviction for disorderly conduct which can be raised at the court eviction hearing.

EXAMPLES WHERE A WARNING OR "NOTICE TO CEASE" IS NOT REQUIRED BEFORE TERMINATING THE RESIDENCY

- There are some "good cause" grounds for removal where the landlord does not have to serve a written warning or "Notice to Cease."
- Where the resident cannot correct or "cure" the complained of behavior, the operator is not required to provide a written Notice to Cease.
- Examples of "good cause grounds" for removal where no Notice to Cease is required are "damage or destruction of the operator's property" and certain "illegal activity" like drug use, stealing from the operator, or assaulting the operator, facility staff or another resident.
- The operator must still terminate the residency by serving a written Notice to Quit.
- The resident still has the right to court process and can still raise defenses against the eviction in court.

REQUIREMENTS OF A "NOTICE TO QUIT" UNDER NJSA 2A:18-61.2

- The "Anti Eviction Act" requires that in all cases where a landlord is seeking to evict a tenant except in the case of non payment of rent - a written notice terminating the tenancy and demanding possession of the premises must be served on the tenant.
- An operator of an RHCF must comply with this requirement in order to evict a resident.
- A "Notice to Quit" must be in writing.
- A "Notice to Quit" must specify the date the residency is terminated.
- A "Notice to Quit" must demand that the resident give up possession of the residence on that date.
- A "Notice to Quit" must specify in detail the reason for the termination of the residency.
- The reason for the termination must be one of the "good cause grounds" under NJSA 2A:18-61.1.
- A "Notice to Quit" must be served on a resident personally; or by leaving a copy at his/her room or by certified mail.

THE TIME PROVIDED IN THE "NOTICE TO QUIT" VARIES DEPENDING ON THE GOOD CAUSE GROUND FOR REMOVAL

- The notice requirements vary depending on the good cause grounds for removal the operator is relying upon.
- Disorderly conduct only requires a 3 day Notice to Quit but violation of rules and regulations requires one full calendar month Notice to Quit.
- The length of the required notice is set forth in NJSA 2A:18-61.2.

COURT PROCESS

- If a resident does not move out by the date set in the Notice to Quit, an operator cannot remove the resident except through a civil court procedure called an "eviction".
- The operator – now called the "plaintiff" - must file a landlord-tenant "complaint" for eviction based on one of the "good cause grounds" for removal.
- The plaintiff must attach a copy of the "Notice to Quit" served on the resident to the complaint.
- The complaint is filed in the Superior Court of New Jersey.
- The resident – now called the "defendant" – will be served with court documents called a "Summons" and the complaint.
- The Summons will tell the resident exactly when and where to go on his or her court date.
- The Summons usually provides about 2-3 weeks advance notice of the court date.

THE RESIDENT CAN BE REPRESENTED BY AN ATTORNEY IN THE COURT EVICTION PROCESS

*The resident does not have to have an attorney in the eviction process but it is a very good idea to try to obtain legal representation.

WHAT HAPPENS ON THE EVICTION COURT DATE?

- It is very important for a resident to be on time for court or to call the court and let them know they will be late.
- The resident must stand up and tell the judge they are present in court when he/she – or the court clerk - reads the list of cases to be heard that date, called the "calendar call."
- There is usually a "mediation" process. A third party meets with the resident and operator – and attorneys – to discuss the case in an effort to "settle" the case without a trial.
- Mediation can be a good opportunity to make an agreement and try to avoid eviction.
- A resident does not have to "settle" their case in mediation. He/she is entitled to a hearing before a Judge.

WHAT HAPPENS AT THE HEARING?

- The plaintiff/operator presents their case first. The plaintiff has the "burden of proof." The operator must establish the "good cause grounds" for removal.
- The plaintiff must testify or present witnesses who can testify to *first hand* knowledge of the events that form the basis for the eviction.
- "Hearsay" evidence is prohibited.
- If the plaintiff operator presents enough evidence to prove the "good cause grounds" for removal, the resident/defendant will then be given an opportunity to provide a defense.
- The resident/defendant can testify on their own behalf and can also bring witnesses to prove their defense to the case.
- Both sides of the case – plaintiff and defendant – can tell the judge about the law that governs the case.
- After both sides have presented their witnesses and have told the court about the law, the judge will make a decision.
- The judge will dismiss the case if he is ruling in favor of the defendant/resident.
- The judge will enter a Judgment of Possession in favor of the plaintiff operator if he rules in favor of the operator.

WHAT HAPPENS IF THE COMPLAINT IS DISMISSED?

- If the complaint is dismissed, that means the operator could not prove a "good cause grounds" for removal and the resident is allowed to continue occupancy of their room. The case is over.

WHAT HAPPENS IF A JUDGMENT FOR POSSESSION IS GRANTED TO THE OPERATOR IN A NON-PAYMENT OF RENT CASE?

- In a non-payment of rent case, the judge will state the amount of rent due when he enters the judgment for possession. If the resident has enough money, he can pay the operator right then and avoid eviction. The Judge will also tell the resident that if the resident pays the amount due to the clerk of the court by 4:30 PM that date, the resident will not be evicted.

WHAT HAPPENS IF A JUDGMENT FOR POSSESSION IS GRANTED TO THE OPERATOR IN ALL CASES OTHER THAN NON-PAYMENT OF RENT?

- Three business days after entry of the Judgment for Possession, the operator can request that the Clerk of the Court issue a "Warrant of Removal". This is a court order directing a "Constable" to remove the resident on a date certain.
- The Warrant of Removal is delivered to the Constable by the Clerk of the Court.
- The Constable posts the Warrant of Removal on the door of the resident.
- The Warrant of Removal will specify a time – at least three business days after the posting of the Warrant of Removal on the door - when the Constable will return to remove the resident and his belongings.
- Although this law only mentions two "3 day" periods, in reality this process actually takes two to three weeks.

WHAT A RESIDENT CAN DO IF A WARRANT OF REMOVAL IS TACKED ON THEIR DOOR: ORDER TO SHOW CAUSE

- After receiving a Warrant of Removal, a resident can request further relief from the court. The Clerk of the Court has sets of forms available at the courthouse for making these applications.
- There are three different kinds of "Order to Show Cause" applications a resident can make after receiving a Warrant of Removal: Vacate the Judgment for Possession; Hardship Stay of the execution of the Warrant of Removal; Order for Orderly Removal.
- Vacate the Judgment for Possession - If the resident thinks the court made a mistake, the resident can file an application to vacate the judgment for possession.
- Hardship Stay of the Execution of the Warrant of Removal - If the tenant is able to pay all their back rent or does not owe any rent, they can ask the court to grant them up to six months to find a new place to move. This is discretionary for the court and will depend on the judge's consideration of all the circumstances.
- Order for Orderly Removal - If the resident owes rent and does not have the money; or if the circumstances of the case do not justify a lengthy hardship stay, the judge can grant the resident up to 7 extra days to make arrangements to move.

ADDITIONAL PROTECTIONS FOR RHCF RESIDENTS

- In addition to the protections of the Anti-Eviction Act, the operator of a Residential Health Care Facility is also required to notify various governmental agencies about the proposed filing of an eviction action against a resident.
- The operator must notify the New Jersey Department of Community Affairs; the county welfare agency, and the state Ombudsman for the Institutionalized Elderly about the proposed eviction. The written notice must be provided to these agencies at the time that a Complaint for Eviction is filed and a copy must be attached to the Complaint for Eviction.
- If these and other notice requirements are not complied with, a Court does not have jurisdiction to evict a resident and the operator/owner must begin the process again.

Additional Provisions in New Law to Address Crisis Situations

- If it is believed that a resident poses a risk to self or others, the resident can still be immediately transferred to a screening center for an evaluation to determine whether the resident poses a risk of danger to themselves or others.
- However, the operator must still proceed with the legal eviction process to remove that resident permanently and the eviction process can be initiated at the same time that the resident is transferred to a screening center for evaluation.

Rationale and Purpose of the New Law

- Protect RHCF residents from arbitrary removal and will place the authority to evict a resident in the hands of a Court to make an independent, neutral decision. RHCF operators must now convince an impartial judge, using competent and sufficient evidence, that a resident whom they seek to remove has violated one of the grounds enumerated in the anti-eviction statute.
- Prior to the new law, residents feared complaining about deplorable conditions, inappropriate treatment, or other malfeasance since they feared retaliation by the operators - most commonly being discharged with no legal recourse.
- With this new law, residents should now feel more comfortable coming forward to report problems in these facilities without fearing that they will be arbitrarily discharged - since they now have "due process" rights.

Getting the Word Out to RHCF Residents of Their New Rights

- Brochure
 - Tear off wallet card with contact information
 - Will be in English and Spanish
 - Will be distributed to County Boards of Social Services for distributions to all relevant agencies
 - Other mailings
- Inform
 - Wellness Center Managers, Partial Care, ICMS, others
 - To be communicated to residents who attend these programs
- Additional Tools
 - YouTube video explaining law that can be shown to residents

An Extension of the Law is to Ensure that Residents Have Access to Voice Their Complaints

- ♦ Free Phones for Low-Income Consumers through Lifeline
- ♦ Concerns About Residents Not Being Afforded Lifeline Phones Because They Share the Same Address – One Free Phone Per Household
- ♦ Caveat – If more than one household lives at the same address (i.e. RHCF's), the resident must complete a form certifying that they do not share income and expenses with anyone else at the same address.
- ♦ Therefore, each resident of an RHCF should qualify for a free phone.

Thank you!

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