

DISCHARGE FROM HOSPITAL CARE

The right to adequate care

As a patient in a hospital you have a fundamental right to be cared for. This duty of the hospital to care for you extends until you are well enough to go home, to a rehabilitation program, to a transition care program or to residential care. A hospital that requires you to leave prematurely may breach the duty of care it owes to you.

It is reasonable to assume that the hospital will know when it is appropriate for you to leave the hospital. This decision should be made on the basis of a medical assessment and an appropriate discharge plan.

If the hospital discharges you before you are medically ready to leave, then the hospital may have breached its duty of care.

Do I have a right to participate in my discharge plan?

The guiding principles of the Victorian *Health Services (Conciliation and Review) Act 1987* provide for:

- (d) the provision of adequate information on services provided or treatment available, in terms which are understandable; and
- (e) participation in decision making affecting individual health care; and
- (f) an environment of informed choice in accepting or refusing treatment.

A right to participate in your discharge plan can be implied from this. In addition, the objectives of the Victorian *Health Services Act 1988* enable a user of health care services to choose the type of health care most appropriate to their needs.

The law establishes the right to informed consent. However the amount of information that must be disclosed depends on each case. There is no legislation recognising a legal right to refuse to leave a health care service.

Can I refuse admission to an aged care facility?

There is no law that specifically recognises a legal right to refuse admission to an aged care facility (formerly known as nursing homes and hostels.) Instead, this right is implicit in the right not to be falsely imprisoned and your right to make your own decision about where you live.

There are three requirements that must be met before a decision to agree to live in a particular aged care facility is valid:

- The decision must be voluntary. That is, you cannot be threatened or induced. You must make the decision free from any pressure, bribes or misrepresentation. The fact that a doctor or other health professional believes that admission is in your best interests does not outweigh your right to make your own decision (providing you are competent to make the decision).
- You must be competent. There is no single legal test for competence. What this means, practically, is that you understand the general nature and effect of the decision you are making. An adult is presumed to be competent unless it is proven otherwise.
- You must be given sufficient information to make an informed choice. You need to know the choices available and the likely consequences of those choices. It is generally accepted that a person cannot consent to something they do not know about. For example, if you agree to live in a particular aged care facility it does not mean that you agree to live in a different facility.

Victorian Civil and Administrative Tribunal: Guardianship List

What do you do if the hospital tells you or your family that an application will be made to the Guardianship List at the Victorian Civil and Administrative Tribunal (VCAT) for the

appointment of a guardian with the authority to move you to an aged care facility?

You or your family can file an application at VCAT as well. Do this as soon as possible to ensure that the applications are heard together. It is important to know that VCAT does not represent the interests of hospitals or families, but is concerned with the best interests of the patient. Contact the Guardianship List at VCAT on (03) 9628 9911 or 1800 133 055 (country callers only).

Your right to complain

If you have a complaint about how you have been treated by the hospital contact the Complaints Liaison Officer at the hospital. If your complaint is not resolved satisfactorily, contact the Health Services Commissioner on (03) 8601 5200 or 1800 136 066 for further advice.

Contact ERA

Phone: (03) 9602 3066, 1800 700 600
Email: era@era.asn.au
Mail: Elder Rights Advocacy
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Melbourne VIC 3000
Website: www.era.asn.au

Empowering older Victorians

Elder Rights Advocacy is the registered business name of Residential Care Rights Inc. (ABN 63 367 539 827) which is part of the National Aged Care Advocacy Program - an Australian Government Initiative.

Note: The information in this fact sheet is general information only – it is not legal advice.

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