

CHAPTER 265  
SB 87 – FINAL VERSION

03/21/13 0850s  
03/21/13 0930s  
22May2013... 1701h  
06/26/13 2186EBA

2013 SESSION

13-0858  
01/04

SENATE BILL **87**

AN ACT relative to the patients' bill of rights.

SPONSORS: Sen. Gilmour, Dist 12; Sen. Reagan, Dist 17; Sen. Soucy, Dist 18; Sen. Odell, Dist 8; Rep. M. Nelson, Hills 35

COMMITTEE: Health, Education and Human Services

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ANALYSIS

This bill clarifies the patients' bill of rights as it applies to home health care providers. The bill also establishes parameters for discharge or transfer from home health care.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to the patients' bill of rights.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 265:1 Patients' Bill of Rights; Definitions. Amend RSA 151:19, I-a and II to read as follows:

2 I-a. "Discharge" means movement of a patient from a facility to a non-institutional setting  
3 ***or the termination of services by a home health care provider*** when the discharging facility ***or***  
4 ***home health care provider*** ceases to be legally responsible for the care of the patient.

5 II. "Facility" means any hospital, ~~[or other facility,]~~ building, residence, or other place or  
6 part thereof, licensed under the provisions of RSA 151:2. ~~[For the purposes of RSA 151:21, this~~  
7 ~~definition of facility shall not include private homes where home care services are provided.]~~ ***For***  
8 ***the purposes of RSA 151:21, RSA 151:25, and RSA 151:26, "facility" shall not include home***  
9 ***health care providers, or private homes where home care services are provided.***

10 265:2 Patients' Bill of Rights; Definitions. Amend RSA 151:19, VI and VII to read as follows:

11 VI. "Patients' rights"[~~]~~ or "rights" means those rights established under RSA 151:21 ***or***  
12 ***RSA 151:21-b, as applicable.***

13 VII. "Transfer" means movement of a patient from one facility to another facility when the  
14 legal responsibility for the care of the patient changes from the transferring to the receiving facility.  
15 Transfer shall not include the temporary movement of a patient from a facility to a hospital or other  
16 location for emergency medical treatment, as long as the facility is in compliance with RSA 151:25.  
17 In the event a facility refuses to readmit a patient in accordance with RSA 151:25 following a  
18 therapeutic leave, a transfer shall be deemed to have occurred when the decision not to readmit is  
19 made. ***Transfer shall not include movement of a client from a home care to an institutional***  
20 ***setting or the shifting of service provision from one home health care provider to another.***

21 265:3 Patients' Bill of Rights; Definitions. Amend the introductory paragraph of RSA 151:21 to  
22 read as follows:

23 The policy describing the rights and responsibilities of each patient admitted to ~~[the]~~ ***a*** facility,  
24 ***except those admitted by a home health care provider,*** shall include, as a minimum, the  
25 following:

26 265:4 Home Care Clients' Bill of Rights. Amend RSA 151:21-b, I to read as follows:

27 I. Home health care providers shall provide ~~[their clients]~~ ***each client or client's legal***

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1 **representative** with a written copy of the rights and responsibilities listed in paragraphs II and III  
2 of this section in advance of or during the initial evaluation visit and before initiation of care. These  
3 rights apply only to the services delivered by or on behalf of the home health care provider. If a  
4 client cannot read the statement of rights it shall be read to the client in a language such client  
5 understands. For a minor or a client needing assistance in understanding these rights, both the  
6 client and the [~~parent or legal guardian or other responsible person~~] **client's legal representative**  
7 shall be fully informed of these rights.

8 265:5 Home Care Clients' Bill of Rights. Amend RSA 151:21-b, II(c) to read as follows:

9 (c) Participate in the development and periodic revision of the plan of care, and to be  
10 informed in advance of any changes to the plan **or intent to discharge except as provided in**  
11 **RSA 151:26-a, III.**

12 265:6 Home Care Clients' Bill of Rights. Amend the introductory paragraph and subparagraphs  
13 (a) and (b) of RSA 151:21-b, III to read as follows:

14 III. The provider has the right to expect the client **or the client's legal representative**  
15 will:

16 (a) Give accurate and complete health information.

17 (b) [~~Assist in creating and maintaining a safe home environment in which care will be~~  
18 ~~delivered.~~] **Create and maintain an environment that is safe and free from sexual or other**  
19 **forms of harassment by the client or others in the home. For the purposes of this**  
20 **subparagraph, an environment is unsafe if conditions in and around the home imminently**  
21 **threaten the safety of the home health care provider personnel or jeopardize the home**  
22 **health care provider's ability to provide care.**

23 265:7 New Paragraph; Home Care Clients' Bill of Rights. Amend RSA 151:21-b by inserting  
24 after paragraph IV the following new paragraph:

25 V. Home health care providers shall not be subject to the provisions of RSA 151:21.

26 265:8 New Paragraph; Temporary Absence. Amend RSA 151:25 by inserting after paragraph II  
27 the following new paragraph:

28 III. This section shall not apply to home health care providers.

29 265:9 Transfer or Discharge of Patients. Amend RSA 151:26, I and the introductory paragraph  
30 of II (a) to read as follows:

31 I. A facility **subject to RSA 151:21** shall not transfer or discharge a patient except for those  
32 reasons listed under RSA 151:21, V.

33 II.(a) Transfer or discharge of a patient **from a facility subject to RSA 151:21** shall in all  
34 instances be preceded by written notice which shall contain the following:

35 265:10 New Section; Discharge of Home Health Care Clients. Amend RSA 151 by inserting  
36 after section 26 the following new section:

37 151:26-a Discharge of Home Health Care Clients.

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1           I. Except as provided in paragraph IV, a home health care provider shall provide a minimum  
2 of 14 days notice of the intent to discharge a client.

3           II. Written notice of discharge shall be provided to the client or the client’s legal  
4 representative and included in the client’s clinical record. A copy of the notice of discharge shall be  
5 provided to the ordering physician or authorizing health care provider, if any, and the case manager,  
6 if any. At a minimum, the notice shall include the following:

7                   (a) The reason for the discharge.

8                   (b) The effective date of the discharge.

9                   (c) The identity of and contact information for the service provider, if any, who is or will  
10 be taking on the care of the client.

11                   (d) The steps the client should take to reinstate services, if any.

12                   (e) The telephone number and contact information for the state and federal home health  
13 care regulatory agency.

14                   (f) The following statement in bold type: “You have a right to appeal the decision to  
15 discharge you from home health care services. If you think you should not be discharged, you or your  
16 legal representative may request an expedited administrative hearing from the New Hampshire  
17 Department of Health and Human Services or you may file an appeal in superior or probate court.  
18 You also may register a complaint with the state and federal home health care regulatory agencies.  
19 If you have a legal representative that person may act on your behalf.”

20           III.(a) A home health care provider may discharge a client if the client’s needs can no longer  
21 be met by the home health care provider, if one or more of the following applies:

22                   (1)(A) The client or the client’s legal representative, the client’s family, persons  
23 residing with the client, or the client’s informal supports are non-compliant with or interfere with  
24 implementation of the plan of care and the scope and effect of the non-compliance or interference:

25                           (i) Has led to or will lead to an immediate deterioration in the client’s  
26 condition, such that home health care will no longer be safe or appropriate; or

27                           (ii) Has made attainment of reasonable therapeutic goals at home  
28 impossible.

29                   (B) In addition, the likely outcome of the non-compliance or interference has  
30 been explained to the client or the client’s legal representative, to the client’s informal supports, and  
31 to the case manager, if applicable, and the client continues to refuse to comply with, or others  
32 continue to interfere with, the implementation of the plan of care.

33                   (2) The availability of home health care or community support services is no longer  
34 sufficient to meet the client’s changing care needs.

35                   (3) The home health care provider personnel with the required qualifications who  
36 were providing the client’s care are no longer employed by the home health care provider and no  
37 other qualified personnel is or is expected to be available.

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1 (b) The home health care provider shall make reasonable attempts, prior to discharge, to  
2 resolve the circumstances that may lead to a discharge under this paragraph. When a home health  
3 care provider determines that a client will require continuing care after services are discontinued  
4 pursuant to this paragraph, the home health care provider shall arrange for or assist the client to  
5 arrange for such services, to the extent practicable, and shall provide sufficient clinical information  
6 to the receiving entity to assure continuity of care and services. The home health care provider shall  
7 educate the patient on how to obtain further care, treatment, and services to meet his or her  
8 identified needs, as necessary.

9 IV.(a) A home health care provider may provide notice of discharge to a client in less than 14  
10 days if:

11 (1) The client requests services be discontinued or the client moves out of the service  
12 area.

13 (2) An emergency discharge is mandated by the client's health care needs and is in  
14 accordance with written orders of the client's ordering physician or authorizing health care provider,  
15 if any.

16 (3) The client no longer needs the services provided by the home health care  
17 provider, as confirmed by the client's ordering physician, authorizing health care provider, or case  
18 manager, as appropriate.

19 (4) Conditions in or around the home imminently threaten the safety of the home  
20 health care provider personnel or jeopardize the home health care provider's ability to provide care,  
21 in accordance with paragraph V.

22 (5) The client, the client's government payor, or the client's third-party payor ceases  
23 payment or denies authorization for further care and the client is unable or unwilling to pay for  
24 continued services or unwilling to apply for other available resources.

25 (b) No discharge shall be permitted if it is contrary to RSA 151:21-b or to the  
26 requirements of Titles XVIII or XIX of the Social Security Act, as applicable. The provider shall give  
27 notice of the discharge allowed under this paragraph, as soon as practicable.

28 V. Conditions in or around the home imminently threaten the safety of the home health care  
29 provider personnel or jeopardize the home health care provider's ability to provide care in the  
30 following situations:

31 (a) Conditions are known to exist in or around the home that would imminently threaten  
32 the safety of personnel, including but not limited to:

33 (1) Actual or probable physical assault.

34 (2) Continuing severe verbal threats which the individual making the threats has  
35 the ability to carry out and which create a reasonable concern for personal safety.

36 (3) Other circumstances that are likely to cause serious injury.

37 (b) The home health care provider has valid reason to believe that its personnel will be

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1 subjected to continuing and severe verbal abuse or sexual harassment, as defined in RSA 354-A:7, V,  
2 which will jeopardize the home health care provider's ability to secure sufficient personnel resources  
3 or to provide care that meets the needs of the client.

4 VI. A home health care provider that intends to discharge a client shall:

5 (a) Prepare a discharge plan designed to ensure a timely and safe discharge in  
6 consultation with the client or the client's legal representative, the client's ordering physician or  
7 other authorizing health care provider, if any, and any other professional involved in the plan of  
8 care, such as a case manager.

9 (b) In the event of an immediate discharge:

10 (1) Take appropriate measures to ensure client safety, including immediate  
11 notification of the client or the client's legal representative, the client's physician or other  
12 authorizing health care provider, if any, and other agencies known by the home health care provider  
13 to be involved in the provision of home health care services, including a case manager.

14 (2) If appropriate, make a report to adult protective services, in accordance with  
15 RSA 161-F, or to child protective services, in accordance with RSA 169-C, or to law enforcement  
16 authorities indicating the client's ongoing care needs and the reason for discharge.

17 (3) Provide written notification in accordance with paragraph II within 5 calendar  
18 days of the discharge.

19 VII.(a) A client of a home health care provider subject to discharge under this section may  
20 appeal to the department of health and human services or to the superior or probate court.

21 (b) The commissioner of the department of health and human services shall adopt rules,  
22 pursuant to RSA 541-A, relative to the proper conduct of administrative appeals under this  
23 paragraph.

24 265:11 Applicability.

25 I. The commissioner of the department of health and human services shall initiate the  
26 rulemaking required under RSA 151:26-a, VII(b) as inserted by section 10 of this act no later than 60  
27 days after passage of this act.

28 II. Pending the adoption of the rules required by RSA 151:26-a, VII(b) as inserted by section  
29 10 of this act, administrative appeals authorized pursuant to RSA 151:26-a, VII(a) shall be  
30 conducted in accordance with He-C 200.

31 265:12 Effective Date. This act shall take effect January 1, 2014.

32  
33 Approved: July 24, 2013

34 Effective Date: January 1, 2014