

# Big Changes to Illinois Involuntary Discharges

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Changes are coming to Illinois Involuntary Transfer or Discharge procedures as a result of a recent Appellate Court ruling in *Lakewood v. IDPH, et al.* *Lakewood* raised three questions: 1) whether the law requires IDPH to hold the hearing within 10 days of a request, 2) whether the law requires IDPH to render a decision on the discharge within 14 days of the hearing request, and 3) whether IDPH can order the facility to allow a resident to stay longer than 10 days after the final order is received.

## 1) Does the law require IDPH to hold the hearing within 10 days of a request?

Yes. The *Lakewood* court held IDPH loses jurisdiction if it does not conduct a hearing within 10 days of the request. The Nursing Home Care Act requires a hearing be held at the resident's facility "not later than" 10 days after the hearing request is filed. The *Lakewood* court held the "not later than" language was negative language; and therefore, the 10 day deadline is mandatory and jurisdictional. As such, IDPH is currently unilaterally setting hearings at the facility within 10 days of their receipt of the resident's Request for Hearing, which is a change from the prior practice of setting initial status conferences via telephone, typically more than 10 days later.

## 2) Does the law require IDPH to render a decision on the discharge within 14 days of a hearing request?

Probably not. The *Lakewood* court did not reach a decision on this issue because it held there was no jurisdiction, so no decision was necessary. Unfortunately, the statutory language regarding the 14 day deadline for IDPH to render a decision is not as strong as the negative language setting forth the mandatory 10 day hearing deadline. Although the court did not decide this issue in the *Lakewood* case, Illinois courts have previously held statutory language setting forth deadlines using language such as "within 14 days" is directory, not mandatory. Directory language does not create a jurisdictional mandate; and therefore, is not as strictly enforced. Even absent a court ruling on this issue, we suspect IDPH will expedite the issuance of Final Orders following the *Lakewood* opinion.

## 3) Can IDPH order the facility to allow a resident to stay longer than 10 days after the final order is received?

No. The statute requires the facility to maintain the resident for 34 days following receipt of the ITD notice or 10 days after receipt of the Final Order, whichever is later. The *Lakewood* court ruled that IDPH cannot extend those deadlines.

Unfortunately, the Involuntary Transfer or Discharge process is sometimes necessary when a resident cannot pay for his stay, is endangering himself or others, is no longer requiring long-term care or cannot be properly cared for by the facility. The *Lakewood* ruling should significantly expedite the process for discharging those residents. Long-term care facilities must be represented by an attorney throughout the ITD process. Please contact me if we can help or if you have any questions regarding the changes.