

A photograph of a person sitting in a wheelchair, wearing a striped shirt. A hand is visible on the large black wheel of the wheelchair. The background is a blurred indoor setting with light-colored walls and a wooden floor.

# **So Your Resident Wants to Leave Against Medical Advice: *A Few Guidelines for Skilled Nursing Facilities***

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# SO YOUR RESIDENT WANTS TO LEAVE AGAINST MEDICAL ADVICE? A FEW GUIDELINES FOR SKILLED NURSING FACILITIES

*Posted by Erica Morris – 12/19/18*

When your resident first expresses a desire to leave against medical advice (“AMA”), take it seriously.

## Step 1: Verbal Prevention

Your first line of defense to ensure your resident’s wellbeing (and consequently, to reduce your risk of liability) is **prevention** – attempt to understand, to the extent possible, the reason for the resident’s desire or decision to leave AMA. Use any resources available to verbally intervene. This can include contacting:

- social workers
- nurses
- physicians
- resident care coordinators
- risk management professionals
- resident relations coordinators
- clergy members
- behavioral health representatives
- family members of the resident, or
- the resident’s personal physician.

Prevention also includes informing the resident of the benefits of staying and the risks of leaving AMA, which may persuade the resident to reconsider his or her decision. The risks may be serious, such as illness or death, and you should remind the resident of any that are applicable. For example, for some residents, it may be a risk that if they leave AMA, they will not be given any medication or medication lists to take with them, and that the facility will not assist the resident with obtaining home health care. For others, a risk may be the possibility that should the resident wish to return, the facility may not be able to accept them back for readmission. Leaving AMA also presents the risk that the resident may not be able to receive the same level of care elsewhere. As a final example, the resident's health insurance may refuse to cover all or part of the resident's stay if he or she leaves AMA and may even refuse to cover subsequent medical conditions or issues resulting from leaving AMA. Indeed, your facility should remind your resident that if he or she leaves AMA, he or she may become personally financially liable for the entire stay.

### Step 2: Assess Decision-Making Capacity

If prevention fails, the next step begins—**assessing your resident's decision-making capacity**. This step is essential to determining your ability to legally keep your resident from leaving AMA. There are two possibilities: you may find that your resident has decision-making capacity or that he or she lacks that capacity. Legally, in the moment when the resident

expresses a desire to leave, there is no in-between. The following factors are critical for this assessment:

- Whether the resident understands the current medical treatment he or she receives at your facility;
- Whether the resident understands the risk associated with leaving AMA (and whether he or she is aware that illness or death may result from leaving AMA);
- The rationale behind the resident's decision;
- Whether the resident is able to retain the information for long enough to make an informed decision;
- Whether the resident is able to make a choice free of coercion or duress;
- Whether the resident is able to communicate his or her decision;
- Whether the decision is consistent with the resident's personally held philosophy, theology, or value system.

This list is not exhaustive, but it is a helpful starting point. The assessment of decision-making capacity must be documented in accordance with your facility's processes (oftentimes this requires a physician to make the determination). State law varies on this issue and you should make sure your facility's policy and processes are in compliance with all applicable state and federal laws. Failing to do so could expose your facility to a wrongful imprisonment claim, among other issues.

### Step 3: What Can I Legally Do?

Below are general guidelines, and you should consult with a trusted healthcare attorney to implement a discharge AMA policy that is compliant with state and federal law.

*Capacitated Adults.* If the resident is determined to have decision-making capacity, the resident has a right to leave. At that point, all you can do is ensure the resident is adequately clothed and has his or her belongings (and if this is not possible, be sure to document why), and ask the resident to sign your facility's waiver form. Be sure to place that document in the medical record, or if the resident refuses to sign it, document the refusal in the medical record along with their reasoning (if any), and the date and time. Even if the resident refuses to sign the waiver form, have a staff member read the form aloud to the resident and document having done so.

*One of the only legally permissible reasons to keep a decision-making capable resident against their will is if the attending medical staff believes that the resident is at substantial risk for harming him or herself or others. If this is the case, the medical staff should initiate the involuntary commitment process.*

*Incapacitated Adults.* If the resident, however, is found not to have decision-making capacity, his or her refusal of care is invalid, and your facility should take appropriate steps to prevent the resident's departure. Be sure to document in the resident's medical record all interactions with the resident and how incapacity was determined.

Conclusion



Creating a culture of good documentation and having policies in place for how to proceed with residents desiring to leave AMA can help prevent or mitigate legal troubles down the road. As I heard someone say recently, “Dance like no one’s watching; document like it may one day be read aloud in court.”

**About the Author:**

Erica Morris is an Associate in Dickinson Wright’s Health Care Practice Group. Her practice areas include healthcare, behavioral healthcare, appellate, and general litigation law. Prior to joining Dickinson Wright, Erica graduated cum laude from the James E. Rogers College of Law at the University of Arizona, and served as a Judicial Law Clerk to the Honorable Robert M. Brutinel of the Arizona Supreme Court. Erica can be reached at 602-889-5342 or [emorris@dickinson-wright.com](mailto:emorris@dickinson-wright.com) and you can visit her bio [here](#).

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