

LETTER OPINION
93-L-15

January 27, 1993

Jack A. Carroll, Ph.D., MHA
Executive Director
Medical Center Rehabilitation
Hospital
University of North Dakota
Box 8202 University Station
Grand Forks, ND 58502

Dear Dr. Carroll:

Thank you for your letter regarding preliminary exploration by the Medical Center Rehabilitation Hospital in Grand Forks and the Medical Services Division of the North Dakota Department of Human Services of the establishment of an extensive care facility at the hospital to treat patients who have residual symptoms which do not require care in an acute disease hospital, but are "too complicated to be managed cost effectively within nursing homes."

We have reviewed your proposal in depth and conclude that each situation would need to be individually evaluated.

Anyone who has already secured admission to a North Dakota nursing facility would indeed need to be afforded numerous rights, including rights which constrain and limit transfers and discharges to specific circumstances. See 42 U.S.C. ? 1396r(c)(2)(A); 42 C.F.R. ? 483.12(a)(2); and N.D.C.C. ? 50-10.2-02(1)(1). The question of whether the circumstances concerning a nursing facility resident permit or require a transfer can only be determined on a case-by-case basis. It would be speculative, if not impossible, to attempt to determine whether "a higher and more consistent level of care which could be offered by a specialized unit" would justify the transfer of a resident without an assessment of the resident's medical needs.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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