



# Nursing Home Discharges

## WHAT FACILITIES NEED TO KNOW



***Many facility-initiated discharges can be resolved successfully.***

***Residents have rights.***

## Why Is This Topic Important?

- ▶ Discharges\* that violate residents' rights can be unsafe, harmful, and traumatic for residents. They can result in:
  - ▶ Resident being uprooted from a familiar setting
  - ▶ The ending of relationships with other residents and staff
  - ▶ Residents have fewer visits from family and friends, especially if relocation is a long distance away
  - ▶ Resident remaining in the hospital for months
  - ▶ Homelessness



- ▶ Discharges are the #1 complaint received by Long-Term Care Ombudsman Programs across the nation.

\*For the purpose of this presentation, the term "discharge" will be used to include transfers.

## Four Facts to Know

1. All notices of discharge must be communicated in writing, in a language and manner the resident understands.
2. Most discharge notices must be given 30 days before the discharge date.
3. Residents have the right to appeal the discharge and must do so before the date of discharge.
4. Federal law provides residents with rights and protections against discharge.

## Inappropriate Discharges

▶ **There are only 6 reasons why a facility can transfer or discharge a resident against their will:**

- ▶ The facility cannot meet the resident's needs;
- ▶ The resident no longer needs nursing facility services;
- ▶ The resident's presence endangers the safety of others in the facility;
- ▶ The resident's presence endangers the health of others in the facility;
- ▶ The resident has failed to pay; or
- ▶ The facility is closing.

• **Note**

- ✓ The law requires the nursing home to problem-solve the reason for discharge and make attempts to address the issue(s).
- ✓ A doctor must document the reason for discharge in residents medical record.
- ✓ The facility must state the reason for discharge in the written notice.

## Inappropriate Discharges

▶ **If the reason for discharge is that the facility "cannot meet the resident's needs," the facility must document the following in the resident's record:**

- ▶ The specific need(s) that cannot be met.
- ▶ What the facility has done to try to meet those needs.
- ▶ The services available in the "new" facility that will meet the resident's needs.

▶ **Note**

- ✓ Except for specialized needs such as acute psychiatric, bariatric, or ventilator care, nursing homes are certified to provide similar types of care and services.

## Inappropriate Discharges

- ▶ **If a resident has submitted paperwork for third party payment and payment status is pending, such as applying for Medicaid, the facility cannot discharge the resident for failure to pay.**
- ▶ **Note**
  - ✓ The facility is responsible for notifying residents of their change in payment status and should ensure residents' have the assistance they need in completing the paperwork.
  - ✓ If a resident's initial application to Medicaid is denied and the resident appeals, the resident cannot be discharged until the appeal is decided.

## Written Notice Required

- ▶ **A discharge notice must be in writing and in a language and manner the resident understands. It must include:**
  - ▶ The reason for the discharge,
  - ▶ The proposed effective date,
  - ▶ The location to which the resident will be discharged,
  - ▶ Information on the residents' rights to appeal the discharge and have an administrative hearing, and
  - ▶ Contact information for the LTCOP and, if applicable, the agencies responsible for advocacy on behalf of persons with mental illness and developmental disabilities.
- ▶ **The notice must be given to the resident and the resident's representative.**
- ▶ **Most discharge notices must be given at least 30 days prior to the discharge date.**
- ▶ **The listed location must be specific, appropriate, available, and agreeable to admitting the resident.**

## Written Notice Required

### ► Note

- ✓ If the written notice does not include all the information listed on the last slide, it is not valid. The facility must start over and issue another notice.
- ✓ **Verbal notice is not an official discharge. All discharges must be in writing.** For example, in response to disagreements about care, nursing home staff may suggest that a resident or their family member consider finding another facility. Such as, "you may be happier in another facility, we'll start looking for another nursing home for you," or "our facility can't meet your mother's needs and we need to find a facility that can." Residents have the right to participate in their care planning and share concerns about their care.

## Residents' Right to Appeal the Discharge

- **Residents have the right to appeal their notice of discharge and remain in the facility pending the outcome of the appeal.**

### Note:

- ✓ The facility must help the resident complete and file a request for an appeal.
- ✓ Appeals must be filed before the date of discharge.



## A Detailed Discharge Plan is Required

- ▶ **Residents have the right to participate in all aspects of discharge planning. The written discharge plan must include a living location, services, care, and medications, if needed.**
  - ▶ The facility must prepare and orient the resident for a safe and orderly discharge in a language and manner the resident understands.
- ▶ **Note**
  - ✓ The resident can ask to visit their new home. This is considered part of orientation.
  - ✓ It is the facility's responsibility to ensure that the resident arrives safely to their new location with their possessions, including transferring any personal funds to them or their new account.

## If a Resident is Away, They Can Return

- ▶ **Residents have the right to return to the facility following hospitalization or therapeutic leave, including the right to return to their bed or the first available bed. The facility must give residents information about these rights, as well as a copy of its bed-hold policy in advance of the resident's leave.**
- ▶ **Note**
  - ✓ **Sending a resident to the hospital does not relieve the facility of the responsibility of following the discharge requirements.** If the facility decides that the resident cannot return, it must issue a discharge letter that gives all the notice requirements (including 30 days notice, and their appeal rights), documentation, and information required under law. If the facility refuses to re-admit the resident, they can contact the Long-Term Care Ombudsman program and the state's licensing and certification agency that oversees nursing homes to file a complaint.

# Resources

**CONSUMER VOICE**  
for Health Long Term Care  
Fact Sheet

## INVOLUNTARY TRANSFER AND DISCHARGE

The threat of transfer or discharge from a nursing home can be both frightening and stressful for residents and their families. Therefore, a facility must require a resident's informed consent before any transfer or discharge of the resident. The Nursing Home Reform Law of 1987 protects residents from involuntary transfer and discharge. Contact the Long Term Care Ombudsman in your area for more information about legal rights and protections and for assistance in working with the facility.

### TRANSFER AND DISCHARGE

**Transfer** is movement from a certified institution to another institution setting that requires legal responsibility for the resident's care. **Discharge** is movement from a certified institutional setting to a non-institutional setting. After discharge, the facility is no longer legally responsible for the resident's care.

### WHAT THE LAW SAYS ABOUT INVOLUNTARY TRANSFER/DISCHARGE:

The Nursing Home Reform Law of 1987 prohibits nursing homes from transferring or discharging a resident unless it is established that one of the permissible reasons for transfer/discharge exist. These reasons are:

- the nursing home cannot provide services and care to the resident;
- the resident's health has improved to the point that he or she no longer needs nursing home care;
- safety of individuals in the facility is endangered;
- the health of others in the facility would otherwise be endangered;
- the resident has failed, after reasonable and appropriate notice, to pay for care (although the facility cannot send a resident who is unable to pay, except if the facility member or other individual) or;
- the facility ceases to operate.

If a resident is to be transferred or discharged, the facility must record the reasons for transfer in the resident's clinical record and notify the resident and the resident's family member, guardian, or legal representative in writing. The notice must include:

- the reason for the transfer or discharge;
- the location to which the resident will be moved;
- the date of transfer or discharge, and
- information about the resident's right to appeal to the state concerning the transfer or discharge.

With the name, address, and telephone number of the state long term care ombudsman.

The location the resident will be moved to must be specific, appropriate, reasonable, and agreeable to serving the resident.

### TIME LIMITS

The law requires that a nursing home must inform the resident and the resident's family member, guardian or legal representative about a transfer or discharge at least thirty (30) days in advance.

### PREPARATION BEFORE TRANSFER OR DISCHARGE

The nursing home must provide discharge planning and sufficient preparation and orientation to residents being transferred/discharged. The law guarantees the right of the resident (and/or family member) to participate in planning, care and placement, which should include choosing a new place to live. The nursing home should also prepare an orientation, such as a visit to the new home, and assure a safe arrival. The resident should know where he or she is going. The facility should also inform the new residence about the resident's needs, preferences and habits. Lastly, the nursing home should ensure protection of the resident's moving process, and any personal funds are given to the resident or transferred to a new account.

### BED HOLD AND READMISSION

The Nursing Home Reform Law gives Medicaid recipients the right to return to their facility after they have been out of the facility due to involuntary or involuntary transfer. Some states will pay to hold a bed for Medicaid residents who are temporarily absent. A Medicaid recipient must be held a bed because the state does not pay to hold the bed, or they have acquired the state's bed hold period. Medicaid rights must not be used to deny a resident's right to return to the facility. The facility must not be available for a non-private room in the nursing home. Residents are entitled to return about bed-hold and readmission rights before upon admission and at the time of transfer. A facility's bed hold policy must be consistent with state regulations.

### ADDITIONAL RIGHTS

The Nursing Home Resident Protection Amendment of 1990 requires that nursing homes continue to provide care for Medicaid residents already living in the facility even if the nursing home chooses to cease participation in Medicaid.

- A resident has the right to participate in planning, care and treatment or changes in care and treatment.
- A resident and their family member or legal representative must receive notice before the resident's room or residence in the facility is changed.
- A resident can refuse transfer from a portion of the nursing home that is certified at one level of care to another portion with different certification.

### COMPLAINTS AND APPEALS

A resident has the right to appeal the facility's decision to transferring him or her. The transfer or discharge notice must include information about how to request a hearing. The resident's right to use legal counsel or other advocates at the hearing and the mailing address and telephone number of the state long term care ombudsman. A complaint may also be filed with the state survey agency.

### PROTECTION AGAINST INAPPROPRIATE TRANSFER OR DISCHARGE

Contact the Long Term Care Ombudsman program if you are concerned about plans for transfer or discharge from a nursing home. The ombudsman is empowered by law to advocate for nursing home residents. He or she can be a very effective voice in the nursing home. When facilities must to state concerns and improve a vulnerable unit, this is a source of power for negotiation with the facility's administration.

Go to [www.theombudsman.org/ncj\\_help](http://www.theombudsman.org/ncj_help) to find an ombudsman in your area.

For more information and resources on transfer and discharge and residents' rights, go to [www.theombudsman.org](http://www.theombudsman.org)

National Consumer Voice for Quality Long Term Care (January 2020) is a nonprofit organization founded in 2013 by three U.S. leaders in long-term care rights and advocacy of the nursing home care system.

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# Resources



## MEMO

### Transfer and Discharge Medicare/Medicaid Certified Skilled Nursing Facilities (SNF) and Intermediate Care Facilities (ICF)

Federal Regulatory Authority: 42 CFR 483.23 Administration, transfer and discharge rights; 483.22 Res. 275, issued 12-22-17; Effective 12-28-17; Implementation 12-28-17; 483.26 Res. 175, issued 12-22-17; Effective 12-28-17; Implementation 12-28-17; 483.26 Res. 175, issued 12-22-17; Effective 12-28-17; Implementation 12-28-17.

**Note:** Notices of transfer and discharge must comply with State Statute and Regulations (Title 19B, 483, and 19B 483-20-20 Transfer and Discharge Procedures).

#### 42 CFR 483.150 (b) Transfer and discharge facility requirements.

- The facility must provide each resident in need of care in the facility, and not transfer or discharge the resident from the facility unless:
  - The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
  - The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
  - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
  - The health of individuals in the facility would otherwise be endangered;
  - The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Payment must be made by the third party, including Medicare or Medicaid, before the date and the resident's return to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;
  - The facility ceases to operate;
  - The facility may not transfer or discharge the resident who has right to appeal a pending admission to 483.20 of this chapter, when a resident exercises that right to appeal a transfer or discharge notice from the facility pursuant to 483.20(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

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## MEMO

### Transfer and Discharge State Licensed Long Term Care Facilities

State Authority: Section 19B.886, 830a and 19B 483-20-20 Transfer and Discharge Procedures.

**Note:** For Medicare/Medicaid Certified Skilled Nursing Facilities (SNF) and Intermediate Care Facilities (ICF), notices of transfer and discharge must also comply with Federal Regulatory Requirements, located at: 42 CFR 483.23 Administration, transfer and discharge rights; 483.22 Res. 275, issued 12-22-17; Effective 12-28-17; Implementation 12-28-17; 483.26 Res. 175, issued 12-22-17; Effective 12-28-17; Implementation 12-28-17; 483.26 Res. 175, issued 12-22-17; Effective 12-28-17; Implementation 12-28-17.

#### 19B 483-20-20 (b) Transfer and discharge facility requirements.

- The facility must provide each resident in need of care in the facility, and not transfer or discharge the resident from the facility unless:
  - The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the facility;
  - The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
  - The safety of individuals in the facility is endangered;
  - The health of individuals in the facility would otherwise be endangered;
  - The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge that resident only allowable charges under Medicaid;
  - The facility ceases to operate.

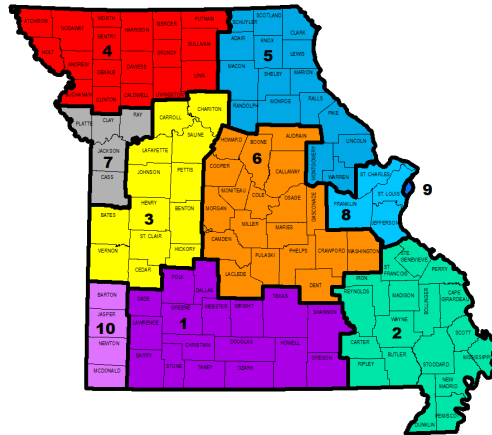
#### 19B 483-20-20 (b)(3)

- When the facility transfers or discharges a resident under any of the circumstances specified in subsections (2)(A)-(E), the resident's clinical record shall be documented. The facility shall ensure that documentation for the transfer or discharge is obtained from:
  - The resident's personal physician when transfer or discharge is necessary under (2)(A)-(E); and
  - A physician when transfer or discharge is necessary under subsection (2)(D); and
  - The facility administrator or the facility director of nursing in all circumstances.

#### 19B 483-20-20 (b)(4)

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## Ombudsman Regional Map



## Contact Information

### State Office of Long-Term Care Ombudsman Program

Missouri Department of Health and Senior Services

PO Box 570

Jefferson City, MO 65102-0570

Phone: (800) 309-3282

Fax: (573) 751-6499

Email: [LTCOmbudsman@health.mo.gov](mailto:LTCOmbudsman@health.mo.gov)

Visit us Online: <https://health.mo.gov/ombudsman/>



