

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

CONSUMER FACT SHEET: TRANSFER & DISCHARGE RIGHTS I

The threat of transfer or discharge from a nursing home can be stressful and frightening to a resident and his or her family. For this reason, there are significant federal protections that limit the circumstances under which residents can be transferred or discharged from their facility.

Below are relevant standards with descriptions excerpted from the federal regulations. On the next page are some points for you to consider when you advocate on these issues. Please see the fact sheet *Transfer & Discharge Rights II* for additional information on discharge protections. [Note: The brackets below provide, for reference, the citation to the federal requirement (42 CFR 483.xx) and the F-tag number used when a facility is cited for failing to meet the requirement.]

I. Transfer & Discharge Protections [42 CFR 483.15(c) F-622]

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

- a. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;*
- b. 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;*
- c. The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;*
- d. The health of individuals in the facility would otherwise be endangered;*
- e. 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;*
- f. The facility ceases to operate.*

II. Right to Appeal

The facility may not transfer or discharge the resident while the appeal is pending... 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. [See <http://ltcombudsman.org/issues/transfer-discharge#what> for more information.]

III. Documentation Required

When the facility transfers or discharges a resident under any of the circumstances specified [above]..., the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Documentation in the resident's medical record must include:

- a. The basis for the transfer...*
- b. When a resident is being transferred because the facility says it cannot meet the needs of a*

resident, ***the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).***
[Emphasis added.]

IV. Notice Before Transfer. Before a facility transfers a resident, it must provide:

- a. Written notice to the resident and his/her representative in language and manner that they can understand;
- b. Notice must be given at least 30 days in advance. (With very limited exceptions, such as when a resident cannot be cared for safely or is a danger to others, in which case “notice shall be given as soon as practicable before transfer or discharge” and the facility must document the danger that failure to transfer/discharge would impose.)
- c. *The facility must send a copy of the notice to... the State Long-Term Care Ombudsman.*

THINGS TO KNOW & CONSIDER:

1. **Protections against discharge.** When a nursing home accepts a resident, it is saying that it can provide safety and good care to meet the needs of that resident as an individual. Thus, there are significant federal protections to ensure that residents are not discharged unfairly by their nursing home. Facilities can only discharge a resident if:
 - 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; or
 - The facility ceases to operate.
2. **Documentation of reasons for discharge.** To prevent nursing homes from inappropriately discharging a resident, federal regulations require that the facility:
 - Ensure that the transfer or discharge is documented in the resident's medical record;
 - Ensure that appropriate information is communicated to the receiving health care institution or provider;
 - A physician documents the basis for the transfer;
 - In cases in which transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility, the facility must document:
 - i. The specific resident need(s) that cannot be met by the facility,
 - ii. The attempts the facility made to try and meet these needs and
 - iii. The specific service available at the receiving facility to meet the need(s).

RESOURCES

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care, a listing of antipsychotic drug names and other resources.