

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Federal Requirements for Providing LTC Ombudsman Programs With Notice of Resident Transfer or Discharge

As of November 2016, federal regulations have required that nursing homes provide a notice of discharge to the state LTC Ombudsman Program (LTCOP) when a resident is discharged or transferred from a facility. In subsequent Guidance, the federal Center for Medicare and Medicaid Services (CMS) placed significant limitations on the circumstances under which a facility is required to provide this notice to the LTCOP.

Below are highlights of the requirements followed by selected excerpts from the Guidance published by CMS in November 2017.

HIGHLIGHTS: NOTICE OF TRANSFER OR DISCHARGE TO LTCOP

- **Facility-initiated discharge/transfer:** LTCOP must be sent copy of the notice “before or as close as possible to the actual time of a facility-initiated transfer or discharge.”
- **Emergency transfer to hospital:** “Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis.”
- **Facility determines not to allow resident to return:** Whether this is from an emergency visit to a hospital or other circumstance, such as therapeutic leave, “if the facility makes a determination to not allow the resident to return, the transfer becomes a facility-initiated discharge” and all requirements for facility-initiated discharge apply.
- **Process:** Facilities are required to know the process for ombudsman notification in their state.

EXCERPTS FROM THE FEDERAL GUIDANCE

Note: The following is from Revision 173 of the State Operations Manual, Appendix PP, dated November 22, 2017. Accessed December 7, 2017 at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf. Emphases in original.

Notice of Transfer or Discharge and Ombudsman Notification

For facility-initiated transfer or discharge of a resident, the facility must notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. Additionally, the facility must send a copy of the notice of transfer or discharge to the representative of the Office of the State Long-Term Care (LTC) Ombudsman. The intent of sending copies of the notice to a representative of the Office of the State LTC Ombudsman is to provide added protection to residents from being inappropriately discharged, provide residents with access to an advocate who can inform them of their options and rights, and to ensure that the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges. Notice to the Office of the State LTC Ombudsman must occur before or as close as possible to the actual time of a facility-initiated transfer or discharge. The medical record must contain evidence that the notice was sent to the Ombudsman. While Ombudsman Programs vary from state to state, facilities must know the process for ombudsman notification in their state.

Facility-Initiated Transfers and Discharges

*In situations where the facility has decided to discharge the resident while the resident is still hospitalized, the facility must send a notice of discharge to the resident and resident representative, and must also send a copy of the discharge notice to a representative of the Office of the State LTC Ombudsman. Notice to the Office of the State LTC Ombudsman must occur at the same time the notice of discharge is provided to the resident and resident representative, even though, at the time of initial emergency transfer, sending a copy of the **transfer** notice to the ombudsman only needed to occur as soon as practicable as described below.*

For any other types of facility-initiated discharges, the facility must provide notice of discharge to the resident and resident representative along with a copy of the notice to the Office of the State LTC Ombudsman at least 30 days prior to the discharge or as soon as possible. The copy of the notice to the ombudsman must be sent at the same time notice is provided to the resident and resident representative.

Emergency Transfers--*When a resident is temporarily transferred on an emergency basis to an acute care facility, this type of transfer is considered to be a facility-initiated transfer and a notice of transfer must be provided to the resident and resident representative as soon as practicable, according to 42 CFR 483.15(c)(4)(ii)(D). Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis.*