

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Issue Alert: Transfer and Discharge Requirements

I. Why are Transfer and Discharge Protections Important?

Unwanted transfers or discharges from a nursing home can be devastating for residents, affecting their physical health and safety, as well as their psychological well-being. According to the Centers for Medicare & Medicaid Services (CMS), inappropriate discharges can cause residents to be “uprooted from familiar settings,” thereby impeding relationships with staff, other residents, and family members.¹ Sadly, reports even indicate that, despite the fundamental requirement that a discharge be safe and appropriate, some nursing homes are discharging residents to homeless shelters.² In a recent (2017) memorandum, CMS acknowledged that **“facility-initiated discharges continue to be one of the most frequent complaints made to State Long Term Care Ombudsman Programs.”**³

Note to Readers:

LTCCC Issue Alerts provide basic information about an issue of concern to nursing home residents.

For further information, please see the Resources and references at the end of the Alert, as well as our website, www.nursinghome411.org.

II. What are the Transfer and Discharge Protections?

Federal law and regulation provide significant protections for residents in this regard. They include: (1) Limitations on the circumstances under which a resident can be discharged; (2) Notice requirements; (3) Appeal rights; and (4) Preparation and orientation requirements.

1. **Limited circumstances under which a resident can be discharged.** Federal regulations state that every licensed nursing home “must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility,” except under the following limited conditions:⁴
 - **It is necessary for the resident’s welfare.** “The transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility;”
 - **The resident no longer needs services.** “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 resident endangers the safety of others.** “The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;”
 - **The resident endangers the health of others.** “The health of individuals in the facility would otherwise be endangered;”

- **The resident failed to pay, or have Medicare or Medicaid pay, for services.** “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. Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses 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;” or
 - **The nursing home closes.** “The facility ceases to operate.”⁵
2. **Notice requirements.** Nursing homes must also adhere to notice requirements when transferring or discharging a resident. A resident cannot be transferred or discharged unless there has been 30 days’ notice. However, there are again limited exceptions, including when the safety or health of individuals are endangered, the resident’s health sufficiently improves to allow for an immediate transfer or discharge, the resident has an urgent medical need that requires a transfer or discharge, the resident has not been in the facility for 30 days, or the facility ceases to operate.⁶
 3. **Appeal rights.** Even when these limited exceptions have been met, nursing homes may not transfer or discharge a resident “when a resident exercises his or her right to appeal a transfer or discharge notice . . . unless the failure to transfer or discharge would endanger the health or safety of the resident or other individuals”⁷ Furthermore, nursing homes must document **“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).”**⁸ According to CMS’s 2017 memorandum, “it should be rare that facilities who properly assess their capacity and capability of caring for a resident then discharge that resident based on the inability to meet their needs.”⁹
 4. **Preparation and orientation.** Nursing homes must also “provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility . . . in a form and manner that the resident can understand.”¹⁰ CMS’s interpretive guidance provides that steps must be taken to minimize the resident’s anxiety, including explaining why the resident is being transferred or discharged.¹¹

The overall goal of the transfer and discharge requirements is to “limit the circumstances under which a facility can initiate a transfer or discharge, thus protecting nursing home residents from involuntary discharge.”¹² Unfortunately, stories of residents being discharged to seemingly unsafe or inappropriate settings, such as homeless shelters that are not compliant with the Americans with Disabilities Act (ADA), signal that some nursing homes may be sidestepping or ignorant of this goal.

III. Are the Transfer and Discharge Standards Being Used to Effectively Protect Residents?

Although residents and their families frequently complain about inappropriate transfers and discharges, data indicate that these complaints are often not being substantiated by state survey agencies and, therefore, are likely not being properly addressed by CMS. In fact, **a 2013 federal report found that 31 percent of nursing home stays resulted in the facility failing to**

meet at least one of the discharge planning requirements.¹³ The report called on CMS to make nursing homes more accountable and to increase enforcement of the related requirements.¹⁴

However, data from Nursing Home Compare show that, over the last three inspection cycles (three years, as of January 2018), state surveyors have only cited 272 deficiencies across the country for failing to allow a resident to remain at the nursing home and “not be transferred or discharged without adequate reason.”¹⁵ During this time, state surveyors have also cited 685 nursing home deficiencies for failing to provide residents timely notification before a transfer or discharge. In total, these transfer and discharge deficiencies account for only .28 percent of all nursing home deficiencies on Nursing Home Compare over the last three inspection cycles.

“Federal regulations allow facilities to initiate discharges of residents only in specific instances. Despite these protections, discharges which violate Federal regulations continue to be one of the most frequent complaints made to State Long Term Care Ombudsman Programs.”

- [CMS Survey and Certification Letter](#) (Dec. 22, 2017)

IV. How Can I Find Out About Transfer and Discharge Deficiencies in My Nursing Home or Those in My State?

As noted above, despite it being a frequent complaint, transfer and discharge citation rates are low across the country with considerable variations between the states. [Nursing Home Compare](http://www.medicare.gov/nursinghomecompare) (<http://www.medicare.gov/nursinghomecompare>) provides information on individual licensed nursing homes across the country. Citations for transfer and discharge deficiencies are reflected in a nursing home’s Statement of Deficiencies (SoDs) under the “Health Inspections” tab. Please note that the absence of a citation does not indicate that a facility has not violated the transfer and discharge requirements. Rather, citations indicate when and where a deficiency was substantiated by the survey system. Numerous studies have indicated that, for various reasons, state and federal agencies do not always identify substandard care or deficient practices. As discussed above, this is, evidently, particularly true when it comes to resident transfers and discharges.

In order to provide the public with relevant information on nursing home transfer and discharge citations, LTCCC’s [Nursing Home Information & Data Page](#) (on our www.nursinghome411.org website) has searchable and downloadable files on every licensed nursing home in the country, including the following data:

US Nursing Home Citations for Transfer and Discharge Deficiencies

This file provides individual folders for every state and Washington, DC. Each folder provides the names of each facility in the state that have been cited for transfer and discharge deficiencies over the last three years (as of the processing date indicated). It is searchable by facility name, address, city, and zip code.

All of the data are from the federal Medicare website. They have been formatted to make it easy for the public to access relevant information on nursing homes in their communities and states.

V. Case Study of a Resident Who was Put in Harm's Way because of an Inadequate Discharge Notice

When a state surveyor identifies substandard care, those findings are described in what is called a Statement of Deficiencies (SoD). All nursing home SoDs are published on [Nursing Home Compare](#). A September 2017 inspection of Willow Point Rehabilitation and Nursing Center in Vestal, New York, illustrates one such instance where surveyors cited a nursing home for substandard care due to deficient transfer and discharge practices.

When state surveyors inspected the nursing home, they found that the facility was deficient in “providing enough notice before discharging or transferring a resident.”¹⁶

The resident’s comprehensive care plan noted that she “had a knowledge deficit related to medications and impaired cognitive function related to dementia.”¹⁷ The resident’s record showed that she had a health care proxy, who lived out of state but was involved in the resident’s care. The discharge plan provided that the resident was to be discharged to the out of state health care proxy.

Although the resident had a family member who often visited her, the health care proxy noted that the family member had memory issues and would not be a reliable caregiver. The resident’s physician did not believe that discharging her was appropriate at the time because of her “cognitive impairment and lack of community support.”¹⁸ The nursing home notified the health care proxy of the physician’s determination.

The resident was later discharged to “someone other than the [health care proxy], and the other person was not considered reliable.”¹⁹ The resident’s record documented that the resident signed a release and was discharged against medical advice. The nursing home administrator and the director of nursing were notified of the resident’s decision to leave the nursing home but they determined that “she could make her own decisions and the facility was unable to stop her.”²⁰

During staff interviews, a licensed practical nurse (LPN) told surveyors that a health care proxy needed to be notified when a resident with a cognitive impairment wanted to leave the nursing home. The LPN further stated that the resident would not be able to sign a release and medications would not be given to a resident who was unable to self-medicate. The nursing home administrator similarly provided that the facility would have to contact the health care proxy and the resident would not be discharged. The administrator added that the police would be notified.

Surveyors found that the nursing home failed to “ensure all residents were safely discharged.”²¹ Specifically, the surveyors noted that the nursing home allowed one resident to be discharged with medications to someone who was not the resident’s health care proxy. Despite the nursing home placing the resident at risk of harm and violating the discharge notice requirement,

“Complaints about allegedly improper evictions and discharges from nursing homes are on the rise in California, Illinois and other states, according to government data. These concerns are echoed in lawsuits and by ombudsmen and consumer advocates.”

- Jocelyn Wiener, [Kaiser Health News](#) (Dec. 20, 2017)

surveyors cited the deficiency at a “D” scope and severity level—meaning that they found “no harm” caused by this violation.²²

VI. A Note on Nursing Home Oversight & Accountability

The accurate identification of substandard nursing home care is a longstanding issue of public concern. Too often, even when resident abuse or neglect are cited, the problems are not identified by surveyors as having caused harm to the nursing home’s residents. A report by the Government Accountability Office (GAO) found that a “substantial proportion of federal comparative surveys identify missed deficiencies at the potential for more than minimal harm level or above.”²³ Recent studies by LTCCC also indicated that states only identify resident harm about 5% of the time that they cite a facility for substandard care, abuse, or neglect.²⁴ It is important to note that, in the absence of a finding of harm, facilities are rarely if ever penalized.

VII. References for More Information & Help

- **Fact Sheets.** [LTCCC’s website](#) provides consumer fact sheets on nursing home transfer and discharge rights. See <http://nursinghome411.org/?s=discharge>.
- **Webinars.** [LTCCC’s YouTube](#) page contains previously recorded webinars on a host of nursing home resident issues, including transfer and discharge rights. See <https://www.youtube.com/watch?v=jMCTwqlzPVE>.
- **Enforcement.** CMS issued a revised State Operations Manual with revised regulations and interpretative guidance. See https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf.
- **News Report.** [“When Nursing Homes Push Out Poor and Disabled Patients,”](#) a *Kaiser Health News* article, highlights the story of Anita Willis. Ms. Willis, a former Head Start teacher, was faced with the difficult decision of deciding whether to leave her nursing home or to pay up to \$336 a day for care after she had a stroke. Unable to pay, Ms. Willis left the nursing home but had nowhere to go. Ms. Willis had become homeless after a breakup and was forced to begin a “months-long” struggle of moving from “budget motels to acquaintances’ couches to hospital ERs.” Sadly, Ms. Willis lost her appeal to return to the nursing home after the judge decided that she left the home voluntarily “because she refused the opportunity to pay to remain there.” See <https://khn.org/news/when-nursing-homes-push-out-poor-and-disabled-patients/>

Please share your thoughts with us on Twitter using **#HarmMatters**. To sign-up for LTCCC’s newsletters and alert, email info@ltccc.org.

¹ *An Initiative to Address Facility Initiated Discharges that Violate Federal Regulations* (S&C: 18-08-NH), CMS (Dec. 22, 2017), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-18-08.html?DLPage=1&DLEntries=10&DLSort=2&DLSortDir=descending>.

² *Id.*

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³ *Id.*

⁴ 42 U.S.C. § 1395i-3(E)(2).

⁵ 42 C.F.R. § 483.15(c)(1).

⁶ *Id.* at § 483.15(c)(4).

⁷ *Id.* at § 483.15(c)(1)(ii).

⁸ *Id.* at § 483.15(c)(2)(i)(B).

⁹ *An Initiative to Address Facility Initiated Discharges that Violate Federal Regulations* (S&C: 18-08-NH), CMS (Dec. 22, 2017), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/Survey-and-Cert-Letter-18-08.html?DLPage=1&DLEntries=10&DLSort=2&DLSortDir=descending>.

¹⁰ 42 C.F.R. § 483.15(c)(7).

¹¹ See *id.* (offering additional guidance).

¹² See *id.* at § 483.15(c)(1) (providing interpretive guidance on the standard care).

¹³ Daniel R. Levinson, *Skilled Nursing Facilities Often Fail to Meet Care Planning and Discharge Planning Requirements*, OIG (Feb. 2013), <https://oig.hhs.gov/oei/reports/oei-02-09-00201.pdf>.

¹⁴ *Id.*

¹⁵ Quotation can be found on www.data.medicare.gov's Nursing Home Compare data for F-tag 201.

¹⁶ *Statement of Deficiencies for Willow Point Rehabilitation and Nursing Center*, CMS (Sep. 29, 2017), <https://www.medicare.gov/nursinghomecompare/inspectionReportDetail.aspx?ID=335291&SURVEYDATE=09/29/2017&INSPTYPE=STD&profTab=1&state=NY&lat=0&lng=0&name=WILLOW%2520POINT%2520REHABILITATION%2520AND%2520NURSING%2520CENTER&Distn=0.0>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² For more information on “no harm” deficiencies, please see LTCCC and the Center for Medicare Advocacy’s monthly newsletter entitled “Elder Justice: What “No Harm” Deficiencies Means for Residents,” available at <http://www.medicareadvocacy.org/newsletter-elder-justice-what-no-harm-really-means-for-residents/>.

²³ *Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses*, GAO (May 2008), <https://www.gao.gov/assets/280/275154.pdf>.

²⁴ Richard J. Mollot & Rediet Demissie, *The Identification of Resident Harm in Nursing Home Deficiencies: Observation & Insights*, LTCCC (2017), <http://nursinghome411.org/identification-of-resident-harm-in-nursing-home-citations/>.