

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

TRANSFER & DISCHARGE RIGHTS I ESSENTIAL PROTECTIONS, DOCUMENTATION, & RIGHT TO APPEAL REQUIREMENTS FACT SHEET

The threat of transfer or discharge from a nursing home can be stressful, frightening, and dangerous. For these reasons, there are significant federal protections that limit the circumstances under which residents can be transferred or discharged from their facility.

This fact sheet provides user-friendly information and excerpts from the federal requirements and guidance on discharge and transfer protections. **Please see our fact sheet, *Transfer & Discharge Rights II***, for information on right to return following hospitalization, discharge planning, and notice of bed-hold and transfer/discharge policies requirements. For the complete federal guidance on transfer and discharge rights, visit nursinghome411.org/discharge.

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-627]

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 [42 CFR 483.15(c)(1)(ii); F-627]

*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.***

[Emphasis added. See <http://ltcombudsman.org/issues/transfer-discharge#what> for more information.]

III. Documentation Requirements [42 CFR 483.15(c)(2); F-627]

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).*

Documentation must be made by the resident's physician for reasons I.a. and I.b., above, and by a physician for reasons I.c. and I.d., above.

NOTE: Except in very limited circumstances, a facility must provide notice 30 days in advance of a discharge. See our fact sheet, ***Transfer & Discharge Rights II***, for detailed information on notice requirements for a facility's bed-hold, transfer and discharge policies.

EXAMPLES OF NON-COMPLIANCE WITH TRANSFER & DISCHARGE REQUIREMENTS

When evidence in the medical record does not support the basis for discharge, such as:

- Discharge based on an inability to meet the resident's needs, but there is no evidence of facility attempts to meet the resident's needs, or no evidence of an assessment at the time of discharge indicating what needs cannot be met;*
- Discharge based on improvement of resident's health such that the services provided by the facility are no longer needed, but documentation shows the resident's health did not improve or actually declined;*
- Discharge based on the endangerment of the safety or health of individuals in the facility, but there is no documentation in the resident's medical record that supports this discharge;*
- Discharge based on failure to pay, however there is no evidence that the facility offered the resident to pay privately or apply for Medical Assistance or that the resident refused to pay or have paid under Medicare or Medicaid;*
- Discharge occurs even though the resident appealed the discharge, the appeal is pending, and there is no documentation to support the failure to discharge would endanger the health and safety of individuals in the facility.*

When evidence in the medical record shows a resident was not permitted to return following hospitalization or therapeutic leave, and there is no valid basis for discharge.

There is no evidence that the facility considered the care giver's availability, capacity, and/or capability to perform needed care to the resident following discharge.

The post-discharge plan of care did not address resident limitations in ability to care for themself.