

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

New Federal Reports Raise Alarms About Fundamental Nursing Home Resident Rights

April 4, 2024 – The inappropriate transfer or discharge of nursing home residents has been a longstanding concern for residents, their families, and policymakers. Far too often, residents are pushed out of their nursing home – which is their home – for inappropriate and illegal reasons. This can have a devastating impact on the resident and their family.

To address this problem, the Centers for Medicare & Medicaid Services (CMS) has developed strong protections to ensure that residents are not inappropriately discharged and that, when faced with a facility-initiated discharge, they have a right to 30 days' notice (except in emergency situations), access to assistance from the LTC Ombudsman Program, and the ability to appeal the discharge. See our [Fact Sheet: Nursing Home Transfer & Discharge Rights](#) for a useful summary of the federal rules and practical information for residents, families, and those who work with them.

Yesterday, the [US HHS Office of Inspector General \(OIG\)](#) released [two reports indicating that there are very serious gaps in implementation of these important protections](#). Though the OIG's sample of discharges reviewed was small (126), the findings corroborate reports that we consistently hear from families, LTC Ombudsmen, and others, in nursing homes across the country, of discharges that violate resident rights and put residents at unnecessary risk.

“Facility-initiated discharges that do not follow Federal regulations can be unsafe and traumatic.”

- Office of Inspector General

The OIG found significant failures to provide basic information in discharge notices, as required by federal rules, including:

- “Nursing homes did not provide a complete written notice to more than three-quarters of residents in our review, undermining a resident’s rights and ability to appeal or plan for discharge.”
- 77% of the discharge notices based on the claim that the facility could no longer meet the resident’s needs failed to document the special services available at the receiving facility that can meet these needs.
- 13% of the discharge notices residents received failed to even provide the reason for discharge.
- Even when a facility provided a discharge notice to the resident, only about half sent a copy of the notice to the LTC Ombudsman, as required.

“These federal protections exist to ensure that residents are treated humanely and respectfully, not ejected at the whim of a provider when they become inconvenient,” said Richard Mollot, LTCCC’s executive director. “However, rules can only protect residents and families when they are implemented and enforced.”

LTCCC’s analysis of federal data indicates that enforcement of these important protections is weak:

- Though inappropriate transfer/discharge is recognized as a serious and persistent problem, there are only about 400 citations a year for failure to protect residents in a transfer/discharge situation.
- Though inappropriate discharges can be “unsafe and traumatic,” only 4% of those citations are rated as causing harm or immediate jeopardy to the resident.
- Violations of transfer/discharge notice requirements, the subject of the OIG’s investigations, result in about 1400 citations per year. However, less than 1% of them are identified as causing harm or immediate jeopardy. This means that nursing homes are unlikely to ever face any penalty for flouting these protections.

For more information, including searchable lists of every U.S. nursing home cited for these violations in the last three years, visit www.nursinghome411.org/discharges2024.