



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, WA 98504-5600

January 26, 2018

AL TSA: NH #2018-001
S&C 18-08-NH: AN INITIATIVE TO ADDRESS FACILITY-INITIATED
DISCHARGES THAT VIOLATE FEDERAL REGULATIONS

Dear Nursing Facility/Home Administrator:

The Nursing Home Reform Law of 1987 set guidelines for facility-initiated transfers or discharges, and established criteria necessary for a facility to initiate such a transfer or discharge. The Centers for Medicare & Medicaid Services (CMS) released a Reform of Requirements for Long-Term Care (LTC) Facilities on September 28, 2016. Part of these reforms became effective November 28, 2016, with some updates to the federal guidance and rules surrounding transfer and discharge.

Of note, CMS designates a facility-initiated transfer or discharge as a transfer or discharge which the resident objects to, did not originate through a resident's verbal or written request, and/or is not in alignment with the resident's stated goals for care and preferences.

The most significant change is that all facility-initiated transfer and discharge notices must be sent to resident, resident's representative and the State LTC Ombuds as described in 42 CFR § 483.15(c)(3).

The timing to give notice is described in 42 CFR § 483.15(c)(4):

§483.15(c)(4) Timing of the notice.

- (i) Except as specified in paragraphs (c)(4)(ii) and (c)(8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.***
- (ii) Notice must be made as soon as practicable before transfer or discharge when—***
 - (A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;***
 - (B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;***
 - (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;***
 - (D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or***
 - (E) A resident has not resided in the facility for 30 days.***

The contents of the facility-initiated notice are described in 42 CFR § 483.15(c)(5).

§483.15(c)(5) Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the following:

- (i) The reason for transfer or discharge;***
- (ii) The effective date of transfer or discharge;***
- (iii) The location to which the resident is transferred or discharged;***
- (iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information***

- on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;*
- (v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;*
 - (vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and*
 - (vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.*

A new Washington State form is being developed that may assist in the Transfer and Discharge notification process. Until the completion of this form, facilities may continue using DSHS form 10-237, assuring a copy is sent to the Ombuds for each facility-initiated discharge.

CMS has begun an initiative to examine and mitigate facility-initiated discharges that violate federal regulations. CMS is examining the State survey agency's intake and triage practices for these type of discharge complaints, developing examples of inappropriate and appropriate discharges for surveyors, identifying best practices for nursing homes, developing training, and evaluating enforcement options for these types of violations. CMS is encouraging States to pursue Civil Monetary Penalty (CMP)-funded projects that may help prevent facility-initiated discharges that violate federal regulations.

For further details regarding the CMS initiative to address facility-initiated discharges, you can find the Survey and Certification letter at:

<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&DLFilter=Discharge&DLSort=3&DLSortDir=descending>

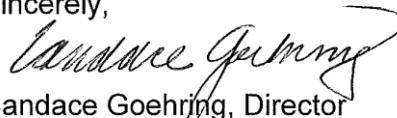
There are also videos created by CMS to assist in clarification of transfer and discharges. To access the videos, go to: <https://surveyortraining.cms.hhs.gov/index.aspx>

- Choose "I am a Provider" and then choose "Course Catalog"
- In the "Search Courses" search bar, type "SME"
- Click on "LTC Survey Process SME" from the list of courses.
- Once you choose to "Launch the Course" a series of videos will appear, including a video about Admission, Transfer, and Discharge

Additional information can be found at: [42 CFR § 483.15](#).

Thank you for your continued commitment to the health and safety of nursing home residents. If you have any questions, please contact your local RCS Field Manager.

Sincerely,



Candace Goehring, Director
Residential Care Services

"Transforming Lives"