

## EXTENDED CARE LINK

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# Facility-Initiated Discharges

Long-term care facilities are often faced with challenges surrounding facility-initiated discharges. These types of discharges are typically initiated because the facility finds themselves without an adequate number of staff who are either available or qualified to care for residents with behavioral concerns or the residents' inability to pay for care. Finding appropriate placement is difficult. There is a lack of facilities who are equipped to care for residents who may be exhibiting undesirable behavior related to resident stressors, dementia, or mental health concerns and therefore finding alternate placement becomes difficult, if not impossible.



### ALLOWABLE DISCHARGES

According to CMS, discharges initiated by the facility are one of the most frequent complaints received by Long Term Care Ombudsman's.<sup>1</sup> These types of discharges are of concern as they may be "...unsafe and/or traumatic for residents and their families."<sup>2</sup> Residents may be moved from familiar surroundings, familiar faces, or may even be relocated long distances from their family or friends resulting in potential isolation.<sup>3</sup>

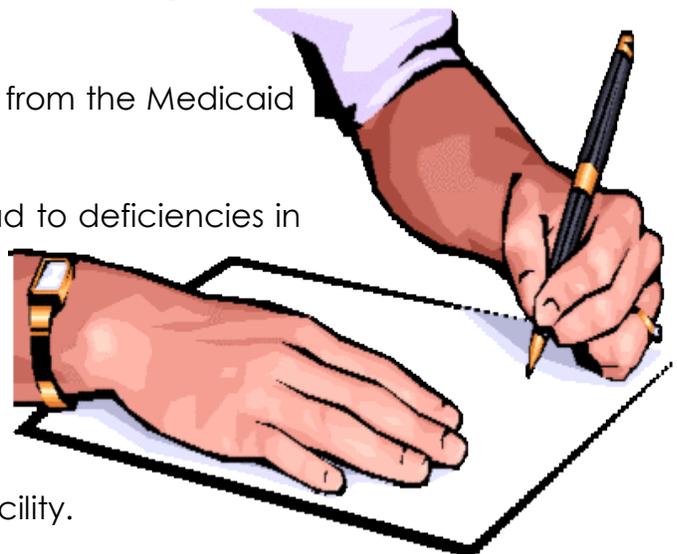
Federal regulations exist to protect the residents rights and allow residents to remain in the facility unless;

- ◆ Necessary for the resident's welfare
- ◆ The resident has improved and no longer needs the services
- ◆ The safety of other individuals within the facility is endangered
- ◆ The health of other individuals within the facility is endangered
- ◆ The resident's failure to pay after reasonable notice
- ◆ The facility ceases to operate<sup>4</sup>

Initiated transfers or discharges that don't meet the six allowable circumstances can place a facility at risk for enforcement action. According to a presentation by representatives of the National Consumer Law Center in 2015, there are several improper justifications for transfer or discharge. Some examples of those improper justifications include;

- ◆ Resident is disruptive, argumentative, and/or obnoxious.
- ◆ Resident is non-compliant
- ◆ The care is too burdensome or expensive
- ◆ Facility exposure to potential legal liability for injuries suffered or caused by the resident
- ◆ Refuses treatment
- ◆ Resident's Medicare eligibility has ended
- ◆ Resident's Medicaid application is pending and the facility has not been paid
- ◆ Facility has voluntarily withdrawn from the Medicaid program<sup>5</sup>

An improper transfer or discharge can lead to deficiencies in the areas of resident rights, admission policies, transfer and discharge requirements, preparation for a safe and orderly transfer/discharge, notice of bed hold policy, and permitting residents to return to the facility.

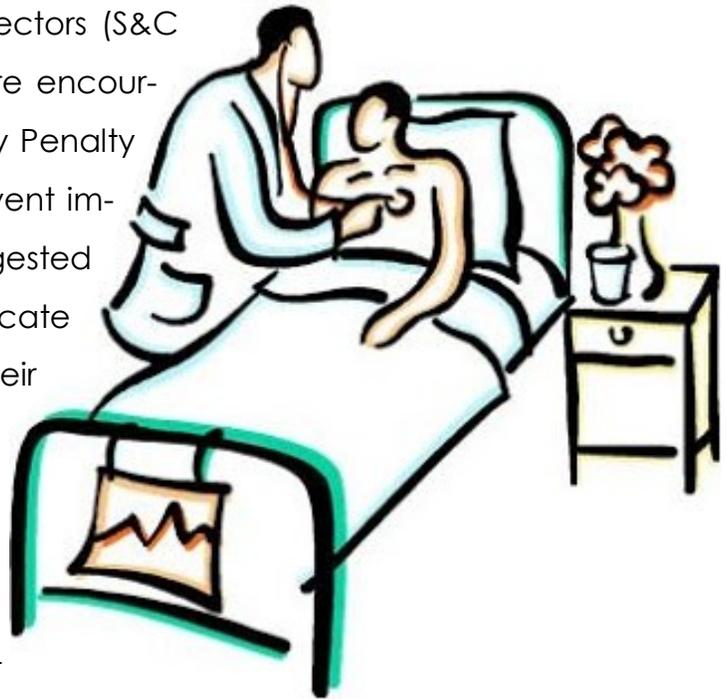


## DISCHARGE PROCESS

Once a determination has been made that a transfer or a discharge is appropriate, certain guidelines must be met in order to ensure a smooth and safe transition. In cases of facility-initiated transfers, the facility must notify the resident and representative the reasons for the transfer or discharge in writing and in manner that they understand.<sup>6</sup> At the same time, a copy of the notice must be provided to the State Long-Term Care Ombudsman.<sup>7</sup> The notice must be provided at least 30 days prior to the discharge or in an emergency situation, as soon as possible.

## CMS PROPOSALS

In a letter to State Survey Agency Directors (S&C 18-08-NH), CMS indicated that they are encouraging states to consider Civil Monetary Penalty (CMP) reinvestment funds to help prevent improper discharges. Some of the suggested projects include programs that educate residents and their families about their rights, creating teams of health professionals that could provide support to reduce the risk of harm to the resident in situations of behavioral concerns, educating facility and staff on best practices, and the development of a collaborative



group to study the concerns and develop potential solutions.<sup>8</sup> Aside from these proposals, CMS has also indicated that the regional offices (RO) will review all deficiencies that arise from facility-initiated discharges.

State survey agencies must transfer any case involving facility initiated discharge violations to the CMS RO for review where there is placement in a questionable or unsafe setting, where residents remain hospitalized, where there is a facility pattern, or other circumstances that the RO may identify as cases they would like transferred. <sup>9</sup>

## CONCLUSION

Long-term care facility transfers and discharges that are not initiated by the resident or family continue to be controversial. Facilities have an obligation to ensure that the rights of the resident are protected and that they are placed in a safe environment. To do that, facilities must determine their capacity and ability to care for those that they admit. This includes performing a facility assessment annually and when substantial changes occur and having a robust intake process to ensure that only those residents whose needs can be safely met are admitted. Once admitted, the facility has an obligation to adapt to the residents changing needs or arrange for an appropriate and safe transfer or discharge.

<sup>1</sup> Centers for Medicare & Medicaid Services. Survey and Certification Letter S&C 18-08-NH. Available from: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-08.pdf>

<sup>2</sup> Indem

<sup>3</sup> Indem

<sup>4</sup> §483.15 (c)(1)(i) (A-F)

<sup>5</sup> Carlson, E., Parker, M, Smetanka, L. (2015, February, 11) Involuntary transfer and discharge from nursing homes: Prevention, advocacy, and appeals. Available from; [https://www.nclc.org/images/pdf/conferences\\_and\\_webinars/webinar\\_trainings/presentations/2014-2015/involuntary\\_transfer\\_and\\_discharge\\_from\\_nursing\\_homes\\_prevention\\_advocacy\\_and\\_appeals.pdf](https://www.nclc.org/images/pdf/conferences_and_webinars/webinar_trainings/presentations/2014-2015/involuntary_transfer_and_discharge_from_nursing_homes_prevention_advocacy_and_appeals.pdf)

<sup>6</sup> Centers for Medicare & Medicaid Services. Survey and Certification Letter S&C 17-27-NH. Available from : <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-27.pdf>

<sup>7</sup> Indem

<sup>8</sup> Ibid, ref #1

<sup>9</sup> Ibid, ref #1

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