

**New York State Department of Health
Office of Health Systems Management
Division of Quality and Surveillance for Nursing Homes and ICFs/MR**

REVISED

**INTERIM POLICY FOR TRANSFER/DISCHARGE OF NURSING HOME RESIDENTS
Effective May 1, 2004
Revised 12/1/04

This policy has been developed to assist regional offices, providers and residents whenever the facility has decided to discharge or transfer a nursing home resident. Federal regulations accord each Title XVIII and XIX resident with specific rights pertaining to the involuntary discharge or transfer from the facility.

The Department has begun the activities necessary to amend the applicable state regulations found in 10 NYCRR 415.3(h), policies and procedures in accordance with applicable federal regulations. In the meantime, this interim policy or guide has been developed to assist the regional office staff, providers and residents in the transfer or discharge process.

The interim policy has been devised from the federal regulations and existing state regulations. It identifies those additional requirements currently not contained in the state regulations but which must be adhered to throughout the discharge or transfer process.

Until the adoption of the revised state regulations, this policy will remain in effect.

1. The Nursing Home must issue a valid written transfer discharge notice to the resident and his or her designated representative and, if known, to a family member or legal representative of the resident. The Notice of Discharge or Transfer must include:
 - a. Date of notice to resident/postmark;
 - b. Resident's identity;
 - c. Effective date of proposed discharge or transfer;
 - d. Location to which the resident is to be discharged or transferred;
 - e. Reason for proposed discharge or transfer including a brief statement of facts that clearly supports the determination to discharge or transfer the resident;
 - f. Statement that the resident has the right to an evidentiary hearing to appeal the proposed discharge or transfer by phone (1-888-201-4563), fax (518-408-1143) or mail to the Department of Health Centralized Complaint Intake Program (CCIP) (161 Delaware Avenue, Delmar, New York 12054);
 - g. Notice that the resident must remain in the facility, (except in cases of imminent danger), pending the appeal hearing decision, if the appeal request is made within 15 days of the date the resident received the discharge/transfer notice; in cases of residents discharged/transferred due to imminent danger, a statement that the resident, if he/she

- prevails at the hearing, has the right to return to the bed he/she occupied prior to the discharge/transfer;
- h. Name, address and phone number of NYS Long Term Care Ombudsman; and
 - i. For residents with developmental disabilities or who are mentally ill, mailing addresses and phone numbers for the agency responsible for protection and advocacy of these individuals.
2. The facility must issue the notice of discharge or transfer in accordance with federal and state regulations.
 - a. Before a nursing facility transfers or discharges a resident, it must notify the resident and the designated representative of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The requirement to provide notice shall apply to transfer or discharge regardless of whether the resident consents to the discharge/transfer or is involuntarily discharged or transferred.
 - b. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge including an opportunity to participate in deciding where to go.
 - c. The discharge/transfer notice must be made by the facility at least 30 days before the resident is transferred or discharged except the notice may be made as soon as practicable before transfer or discharge when:
 - i. The safety or health of residents in the facility would be endangered, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to address the problem;
 - ii. The resident's health improves sufficiently so the resident no longer needs the services of the facility to allow for a more immediate transfer or discharge or;
 - iii. The resident's urgent medical needs require an immediate transfer or discharge.
 3. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must verbally inform and provide written information to the resident and a family member or legal representative that specifies the duration of the bed hold policy under which the resident may return. At the time of transfer for any reason, the facility shall verbally inform and provide written information to the resident and the designated representative that specifies the duration of the bed hold policy during which the resident is permitted to return and resume residence in the facility.
 4. The resident or his/her designated representative must make his/her request for an appeal hearing of the notice of discharge or transfer to the DOH Centralized Complaint Intake Program at phone 1-888-201-4563, fax 518-408-1147 or write 161 Delaware Avenue, Delmar, New York 12054. CCIP will provide an acknowledgement letter to the individual requesting the appeal and forward the appeal request to the DOH Case Resolution Bureau to investigate the request for an appeal and the circumstances surrounding the proposed discharge/transfer.

- a. The resident must remain (except in cases of imminent danger) in the facility pending the appeal hearing decision if the appeal request is made within 15 days of the date of receipt of the discharge/transfer notice by the resident.
 - b. The hearing may be held post-discharge if the appeal request is made after 15 days following the date of receipt of the notice.
 - c. The resident has 90 days from the date the notice is received to request an appeal hearing.
5. The Centralized Complaint Intake Program (CCIP) shall accept hearing requests and then forward said requests to the Department of Health Case Resolution Bureau. The Case Resolution Bureau will then, following the investigation, forward the appeal request to Bureau of Adjudication, which will then set the evidentiary discharge or transfer appeal hearing date to commence within 15 working days of the date of the appeal request pursuant to 10 NYCRR 415.3(h) and 42 USC 1396(e)(3) and 42 CFR Part 43.1.
 - a. The evidentiary discharge or transfer appeal hearing is conducted by the Department of Health's Bureau of Adjudication.
 - b. The hearing is conducted at a reasonable time and date and only after adequate written notice.
 - c. The hearing is held at a location convenient to the resident and the facility. The hearing may be held at the facility.
 - d. A record of the hearing must be maintained:
 - i. A tape recording or transcript of testimony and exhibits or official report containing the substance of what happened at the hearing;
 - ii. All papers and request filed in the proceeding; and
 - iii. The decision of the hearing officer.
 - e. Both parties (resident and facility) have the opportunity to present their case through documents and witnesses with the opportunity to cross-examine witnesses.
 - f. The resident and their representative have access to all facility records pertaining to his/her care and case before the date of the hearing and during the hearing.
 - g. The facility has the burden of proof on the issues of the appropriateness of the transfer or discharge.
6. In the event the facility issues an invalid "Notice of Discharge or Transfer" to the resident while still residing at the facility, the DOH Case Resolution Bureau should so notify the resident and the facility of the invalidity of the facility's notice and indicate that the resident's request for a discharge or transfer appeal is moot at this point, and the resident must be allowed to remain at the facility. An Invalid of Notice of Discharge or Transfer is one which does not contain all required information or does not comply with the specified time frames.

For those residents transferred who subsequently receive an invalid notice or received no notice from the facility, the resident will still maintain the right to appeal the discharge and the rights to an appeal will not be compromised because the notice was invalid or not provided:

- a. For those residents still in the facility who receive a notice that is invalid, the facility may not take any action to transfer a resident until a valid notice has been provided.
 - b. The facility may issue a new "Notice of Discharge or Transfer" to the resident that complies with all applicable regulations. The resident can then request an appeal for the valid notice.
7. The DOH Bureau of Adjudication issues a "Notice of Hearing" to the resident and the facility with a copy to the Division of Quality and Surveillance for Nursing Homes and Intermediate Care Facilities/MR. The notice of hearing must include:
 - a. A statement of the action the nursing home intends to take;
 - b. The reason for the intended action;
 - c. The specific regulation(s) involved;
 - d. An explanation of the resident's right to an evidentiary hearing;
 - e. The date and time of the hearing or a date by when the hearing is to be scheduled;
 - f. An explanation that the resident may represent him/herself or use legal counsel, a relative, a friend or other spokesperson at the appeal hearing; and
 - g. An explanation of the circumstances under which Medicaid is continued if a hearing is requested.
8. A decision *should* be made by the hearing officer within one week after the conclusion of the hearing. The decision of the hearing officer must:
 - a. Be written with copies sent to the resident, their representative, the facility and the Division of Quality and Surveillance for Nursing Homes and Intermediate Care Facilities/MR;
 - b. Based solely on the record of the hearing and must be supported by and in accordance with substantial evidence;
 - c. Summarize the facts;
 - d. Identify the regulations supporting the decision; and
 - e. Provide directives as to how the hearing decision shall be carried out.