



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 11, 2022

RE: DAL-NH 19-07
Notice of Transfer or Discharge and
Permitting Residents to Return
Redistributed

Dear Nursing Home Administrator:

The Department has noted a significant uptick of Refusal to Readmit allegations in 2022. Please ensure all pertinent staff are aware of the Federal regulations regarding resident transfers or discharges.

The purpose of this communication is to clarify the requirement to permit residents to return to the nursing home after transfer to an acute care setting, the documentation required for a facility-initiated transfer or discharge, the difference between a facility-initiated and resident-initiated transfer/discharges, and the requirement for a facility to send a copy of the discharge notice to a representative of the Office of the State Long-Term Care (LTC) Ombudsman for facility-initiated discharges.

Federal regulations allow nursing homes to initiate discharges of residents only in specific instances. Despite these protections, discharges which violate Federal regulations continue to be one of the most frequent complaints made to the State LTC Ombudsman program.

Federal regulations governing long-term care facilities provide many protections for all nursing home residents, including the right to remain in the facility unless a limited set of circumstances apply:

§483.15(c)(1)(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless-

1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
2. 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;
3. The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
4. The health of individuals in the facility would otherwise be endangered;
5. 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. Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
6. The facility ceases to operate.

To demonstrate that any of the circumstances permissible for a facility to initiate transfer or discharge as specified in 1-6 above have occurred the medical record must show documentation of the basis for the transfer or discharge. This documentation must be made before, or as close as possible to the actual time of transfer or discharge.

To demonstrate 1 and 2 above for permissible facility-initiated transfer or discharge, the **resident's physician** must document information about the basis for transfer or discharge. Additionally, for circumstance 1 above, the inability to meet the resident's needs, the documentation made by the resident's physician must include:

- The specific resident needs the facility could not meet;
- The facility's efforts to meet those needs; and
- The specific services the receiving facility will provide to meet the needs of the resident that cannot be met at the current facility.

Facilities are required to determine their capacity and capability to care for the residents they admit, so in the absence of atypical changes in residents' conditions, it should be rare that facilities that properly assess their capacity and capability to care for a resident then discharge that resident based on the inability to meet the resident's needs. Therefore, facilities should not admit residents whose needs they cannot meet based on the facility assessment.

Facility-Initiated Transfers and Discharges: 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 or preferences.

In situations where the facility has decided to discharge the resident while the resident is still hospitalized, the facility must send a notice of discharge to the resident and resident representative and must also send a copy of the discharge notice to a representative of the Office of the State LTC Ombudsman. Notice to the Office of the State LTC Ombudsman must occur at the same time the notice of discharge is provided to the resident and resident representative, even though, at the time of initial emergency transfer, sending a copy of the transfer notice to the ombudsman only needed to occur as soon as practicable as described below.

For any other types of facility-initiated discharges, the facility must provide notice of discharge to the resident and resident representative along with a copy of the notice to the Office of the State LTC Ombudsman at least 30 days prior to the discharge or as soon as possible. The copy of the notice to the ombudsman must be sent at the same time notice is provided to the resident and resident representative.

Emergency Transfers

When a resident is temporarily transferred on an emergency basis to an acute care facility, notice of the transfer may be provided to the resident and resident representative as soon as practicable, according to 42 CFR 483.15(c)(4)(ii)(D). Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as providing a list of residents on a monthly basis.

To further help facilitate this process, the contact information for the Long-Term Care Ombudsman Program by county has been provided as an attachment to this correspondence.

For further guidance, please refer to Centers for Medicare and Medicaid Services (CMS) S & C 18-08-NH: *An Initiative to Address Facility Initiated Discharges that Violate Federal Regulations* dated December 22, 2017.

Resident-Initiated Transfers and Discharges: Means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility.

The medical record must contain documentation or evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility. A resident's expression of a general desire or goal to return home or to the community or elopement of a resident who is cognitively impaired should not be taken as notice of intent to leave the facility. Discharges following completion of a skilled rehabilitation stay may not always be a resident-initiated discharge. In cases where the resident may not object to the discharge, or has not appealed it, the discharge could still be involuntary and must meet all the requirements of the regulation. For example, it is not permissible to discharge a resident because they have completed short-term rehabilitation and now require long term placement. In New York State, all beds in a nursing home are dually Medicare and Medicaid certified; therefore, there is no delineation between a short-term rehabilitation bed and a long-term care bed. Discharging for this reason is prohibited.

For resident-initiated transfers or discharges that meet all the requirements of the law, sending a copy of the notice to the ombudsman is not required.

Frequently Asked Questions (FAQs) related to Discharges Notices to the Ombudsman Program and facility-initiated discharges has been provided as an attachment to this correspondence.

We encourage all facilities to review their policies and procedures related to facility and resident-initiated transfers and discharges to ensure compliance with the requirements of participation with CMS.

The Division of Nursing Homes & ICF/IID Surveillance and the Office of the State Long-Term Care Ombudsman appreciate your efforts to ensure residents' rights are promoted and protected at your facility.

Sincerely,

Mary Jane Vogel
Acting Director

Division of Nursing Homes
& ICF/IID Surveillance
Office of Aging for Long Term Care

Claudette Royal, State Ombudsman
Director
Long Term Advocacy
NYS Office for the Aging

Frequently Asked Questions Regarding Discharge Notices to the Ombudsman Program

1. Q: Should I send information with the discharge notice to LTCOP such as care plans, discharge summary, doctor's notes?

A: The discharge notice is the only document that should be provided to the Ombudsman program.

2. Q: Is discharge from short-term rehab to another facility for long-term care considered facility-initiated?

A: All nursing home beds in NYS are certified for both short-term and long-term care. If the resident did not specifically request the discharge and it is not in alignment with their admission and desired outcomes, then it is facility-initiated.

3. Q: What is the difference between a facility-initiated and involuntary discharge?

A: Regulations limit the circumstances under which a facility can initiate a transfer or discharge, thus protecting nursing home residents from involuntary discharge. In the following limited circumstances, facilities may initiate transfers or discharges:

1. The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.
2. The resident's health has improved sufficiently so that the resident no longer needs the care and/or services of the facility.
3. The resident's clinical or behavioral status (or condition) endangers the safety of individuals in the facility.
4. The resident's clinical or behavioral status (or condition) otherwise endangers the health of individuals in the facility.
5. The resident has failed, after reasonable and appropriate notice, to pay, or have paid under Medicare or Medicaid, for his or her stay at the facility.
6. The facility ceases to operate.

4. Q: Where do I obtain the address for my local Ombudsman Program?

A: For your convenience the addresses of the Ombudsman Program is included as an Attachment to this DAL.

5. Q: What is the correct agency contact information to be provided on the discharge notice for residents with mental illness or developmental disabilities?

A. Disability Rights New York
725 Broadway, Suite 450
Albany, New York 12207
Email: Mail@DRNY.org
Phone: 518-432-7861 or 1-800-993-8982

6. Q: When can I send a list of residents discharged or transferred to LTCOP?
- A: The list of residents can be sent for emergency transfers such as transfer to an acute care setting. This list can be sent on a monthly basis. Residents being discharged, including residents discharged after a subacute rehabilitation stay, require a discharge notice and this notice needs to be sent to LTCOP at the same time it is provided to the resident/representative.
7. Q: When insurance coverage stops, and a resident is being discharged, is this considered resident-initiated?
- A: A resident-initiated discharge should be in alignment with the resident's goals for admission and desired outcomes.
8. Q: If a resident is sent to the hospital due to the resident's clinical or behavioral status endangering the health and/or safety of other individuals in the facility, do I need to issue a Discharge/Transfer Notice?
- A: A hospital is not an appropriate discharge location. Admission assessments are key to ensuring the facility can care for the residents admitted. If there is evidence a facility cannot meet the resident's needs, or the resident poses a danger to the health and safety of his/herself or others, the facility must follow all the requirements as they apply to discharge including the basis for discharge, provide notice to the resident, his/her representative and the LTCOP, reason for discharge, discharge location and appeal rights information. A facility's determination not to permit a resident to return must not be based on the resident's condition when originally sent to the hospital.

Contact Information for LTCOP/Discharge Notices by County

County	Agency	Email for Discharge Notices	Phone
Suffolk	Family Service League 55 Horizon Drive Huntington, NY 11743	Ombudsman@fsl-li.org	631-470-6755
Nassau	Family and Children's Association 100 East Old Country Road Mineola, NY 11501	ombudservice@familyandchildrens.org	516-466-9718
Bronx, Manhattan, Richmond, Kings and Queens	Center for the Independence of the Disabled (CIDNY) 841 Broadway, Suite 301 New York, NY 10003	tdnotice@cidny.org	212-812-2901
Westchester, Putnam, and Rockland	Long Term Care Community Coalition-Tri County Long Term Care Ombudsman Program 10 North Street Cold Spring, NY 10516	tricity.ltcop@ltccc.org	(914) 500-3406
Columbia, Dutchess, Greene, Orange, Sullivan, and Ulster	Long Term care Community Coalition-Hudson Valley LTC Ombudsman Program 7 Pine Woods Road, Suite 3C Hyde Park, NY 12538	ombudsman@hudsonvalleyltcop.org	845-229-4680 x102
Albany, Fulton, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	Catholic Charities Senior and Caregiver Services 1462 Erie Boulevard, 2 nd Floor Schenectady, NY 12305	dischargenotice@cathcharschdy.org	518-372-5667
Clinton, Essex, and Franklin	North Country Center for Independence 80 Sharron Avenue Plattsburgh, NY 12901	ombudsman@ncci-online.com	518-562-1732
Jefferson Lewis and St. Lawrence	Northern Regional Center for Independent Living 210 Court Street #107 Watertown, NY 13601	Ombudsman@nrcil.net	315-785-8703 x228
Herkimer, Madison, Oneida, and Otsego	Resource Center for Independent Living 409 Columbia Street PO Box 210 Utica, NY 13503-0210	Ombudsman@RCIL.com	315-272-1872
Cayuga, Cortland, Onondaga, and Oswego	ARISE Child and Family Service 635 James St. Syracuse, NY 13203	ombudsman@ariseinc.org	315-671-5108
Broome, Chenango, Delaware, Tioga	Action for Older Persons 200 Plaza Dr. Suite B Vestal, NY 13850	dischargenotice@actionforolderpersons.org	607-722-1251
Tompkins, Chemung and Schuyler	Tompkins County Office for the Aging 214 West Martin Luther King Jr./State St. Ithaca, NY 14850	ltcombudsman@tompkins-co.org	607-274-5498
Monroe, Genesee, Livingston, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates	Lifespan 1900 South Clinton Avenue Suite 13 Rochester, NY 14618	Ombudsman@lifespan-roch.org	585-244.8400 x114
Allegany and Steuben	AIM Independent Living Center 271 E. First Street Corning, NY 14830	dischargenotice@aimcil.com	607-962-8225 x112
Cattaraugus, Chautauqua, Erie and Niagara	People Inc. 2747 Main Street, 2 nd Floor Buffalo, NY 14214	LTCOmbudsman@people-inc.org	716-817-9222