



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

§483.15 Admission Transfer and Discharge Rights

Objective

- ▶ To review revisions and addendums to the Admission, Transfer and Discharge process beginning on November 28, 2017.

Source: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Advance-Appendix-PP-Including-Phase-2-.pdf>



Admissions

1. The facility must establish and implement an admissions policy.
2. The facility must:
 - (i) Not request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and
 - (ii) Not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.
 - (iii) Not request or require residents or potential residents to waive potential facility liability for losses of personal property.
3. The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

Admissions

4. In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

- (i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term ~~nursing facility services~~ so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and
- (ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

5. States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

6. A nursing facility must disclose and provide to a resident or potential resident prior to time of admission, notice of special characteristics or service limitations of the facility.

7. A nursing facility that is a composite distinct part must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations.



Admissions: Guidance

- ▶ Residents must not be asked to waive facility responsibility for the loss of their personal property or be unable to use personal property because it is only permitted in the facility if safeguarded by the facility in a manner that makes the property essentially inaccessible to the resident. These waivers effectively take away the residents' right to use personal possessions and relieve facilities from their responsibility to exercise due care with respect to residents' personal property. Compliance requires facilities to develop policies and procedures to safeguard residents' personal possessions without effectively prohibiting a resident's use of personal possessions. **This provision is not intended to make facilities automatically liable for every loss regardless of whether or not the facility is aware of the extent of personal property brought into the facility.**
- ▶ Examples of reasonable facility policies may include
 - 1) Establishing a process to document high value personal property (particularly cash, valuables, and medical/assistive devices) brought in by residents; and
 - 2) Establishing a process to work with residents and their representatives/family to ensure safety as well as availability to the resident of cash and/or items over a certain dollar value, including medical/assistive devices.



Transfer and Discharge

Facility requirements

- The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:
 - The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - 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
 - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
 - The health of individuals in the facility would otherwise be endangered;
 - 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
 - The facility ceases to operate.
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Documentation

When the facility transfers or discharges a resident under any of the aforementioned circumstances facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Documentation in the resident's medical record must include:

- The basis for the transfer per paragraph

- The specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

The documentation must be made by

- The resident's physician when transfer or discharge is necessary

- A physician when transfer or discharge is necessary

Information provided to the receiving provider must include a minimum of the following:

- Contact information of the practitioner responsible for the care of the resident.

- Resident representative information including contact information

- Advance Directive information

- All special instructions or precautions for ongoing care, as appropriate.

- Comprehensive care plan goals

- All other necessary information, including a copy of the resident's discharge summary, and any other documentation, as applicable, to ensure a safe and effective transition of care.



Definitions

“Facility-initiated transfer or discharge”: 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.

“Resident-initiated transfer or discharge”: Means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility (leaving the facility does not include the general expression of a desire to return home or the elopement of residents with cognitive impairment).

“Transfer and Discharge”: Includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility. Specifically, transfer refers to the movement of a resident from a bed in one certified facility to a bed in another certified facility when the resident expects to return to the original facility. Discharge refers to the movement of a resident from a bed in one certified facility to a bed in another certified facility or other location in the community, when return to the original facility is not expected.



Discharges

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.



Required Documentation

- ▶ To demonstrate that any of the circumstances permissible for a facility to initiate a transfer or discharge, the medical record must show documentation of the basis for transfer or discharge. This documentation must be made before or as close as possible to the actual time of transfer or discharge.
- ▶ The resident's physician must document information about the basis for the transfer or discharge when:
 - ▶ The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.
 - ▶ The resident's health has improved sufficiently so that the resident no longer needs the care and/or services of the facility.
- ▶ In the case of the facility's 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 efforts to meet those needs
 - ▶ The specific services the receiving facility will provide to meet the needs of the resident which cannot be met at the current facility.
- ▶ Documentation regarding the reason for the transfer or discharge must be provided by a physician, not necessarily the attending physician when:
 - ▶ The resident's clinical or behavioral status (or condition) endangers the safety of individuals in the facility.
 - ▶ The resident's clinical or behavioral status (or condition) otherwise endangers the health of individuals in the facility.

Notice of Transfer or Discharge & Ombudsman Notification

- ▶ For facility-initiated transfer or discharge of a resident, the facility must notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
- ▶ Additionally, the facility must send a copy of the notice of transfer or discharge to the representative of the Office of the State Long-Term Care (LTC) Ombudsman. The intent of sending copies of the notice to a representative of the Office of the State LTC Ombudsman is to provide added protection to residents from being inappropriately discharged, provide residents with access to an advocate who can inform them of their options and rights, and to ensure that the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges.
- ▶ Notice to the Office of the State LTC Ombudsman must occur before or as close as possible to the actual time of a facility-initiated transfer or discharge. The medical record must contain evidence that the notice was sent to the Ombudsman. While Ombudsman Programs vary from state to state, facilities must know the process for ombudsman notification in their state.



Contents of the Discharge Notice

- ▶ **The facility's notice must include the following:**
 - ▶ The specific reason for the transfer or discharge
 - ▶ The effective date of the transfer or discharge
 - ▶ The location to which the resident is to be transferred or discharged
 - ▶ An explanation of the right to appeal to the State
 - ▶ The name, address (mail and email), and telephone number of the State entity which receives appeal hearing requests
 - ▶ Information on how to request an appeal hearing
 - ▶ Information on obtaining assistance in completing and submitting the appeal hearing request
 - ▶ The name, address, and phone number of the representative of the Office of the State Long-Term Care ombudsman.



Contents of the Discharge Notice

- For residents with intellectual and developmental disabilities and/or mental illness, the notice must include the name, mail and e-mail addresses and phone number of the state protection and advocacy agency responsible for advocating for these populations.
- **Timing of the Notice:** Generally, this notice must be provided at least 30 days prior to the transfer or discharge. Exceptions to the 30-day requirement apply when the transfer or discharge is effected because:
 - The resident's welfare is at risk, and his or her needs cannot be met in the facility (i.e., emergency transfer to an acute care facility)
 - The health or safety of others in the facility is endangered.
- In these cases, the notice must be provided as soon as practicable and notice to the ombudsman in these situations can be sent when practicable, such as a list of residents on a monthly basis.
- **Changes to the Notice :** If information in the notice changes, the facility must update the recipients of the notice as soon as practicable with the new information to ensure that residents and their representatives are aware of and can respond appropriately. For significant changes, such as a change in the destination, a new notice must be given that clearly describes the change(s) and resets the transfer or discharge date, in order to provide 30 day advance notification.

