NEW YORK STATE | Department of Health

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January 7, 2025

Subject: DAL NH 25-01
Transfer or Discharge Notice Expectations

Dear Nursing Home Administrator:

The purpose of this communication is to clarify previously issued guidance, including that provided via DAL NH 19-07, regarding expectations of permitting residents to return to the Nursing Home, referenced herein as the "facility," following transfer to an acute care setting. This correspondence clarifies the requirements for when the facility transfers or discharges a resident under any circumstances and documentation required for transfers or discharges, and the email address to where a facility is to send copies of discharge notices to the Long-Term Care Ombudsman Program. To support this information, enclosed are a Question and Answer guide and a document that lists county-specific contact information for the Long-Term Care Ombudsman Program.

Federal Regulations

Federal regulations governing Nursing Homes provide various protections for residents, including the right to remain in the facility unless a limited set of circumstances applies. Specifically, Title 42 of the Code of Federal Regulations ("42 CFR"), Section 483.15(c)(1)(i) states that *"The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless -*

A. *The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;*
B. *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;*
C. *The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;*
D. *The health of individuals in the facility would otherwise be endangered;*
E. *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*
F. *The facility ceases to operate."*

The following table illustrates minimum requirements the facility must demonstrate when one of the referenced regulatory circumstances applies. Please note that it is not intended to be all-inclusive as each circumstance is unique.

Circumstance (42 CFR)	Minimum Requirement
§ 483.15(c)(1)(i)(A)	The medical record must substantiate the basis for the transfer or discharge. Accordingly, such documentation must be made before or as close as possible to the actual time of transfer or discharge. The resident's physician must document the basis for transfer or discharge. The inability to meet the resident's needs, at minimum 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.
§ 483.15(c)(1)(i)(B)	The medical record must substantiate the basis for the transfer or discharge. Accordingly, such documentation must be made before or as close as possible to the actual time of transfer or discharge. The resident's physician must document the basis for transfer or discharge.
§ 483.15(c)(1)(i)(C)	The medical record must substantiate the basis for the transfer or discharge. Accordingly, such documentation must be made before or as close as possible to the actual time of transfer or discharge.
§ 483.15(c)(1)(i)(D)	
§ 483.15(c)(1)(i)(E)	
§ 483.15(c)(1)(i)(F)	

As a reminder, facilities are required to determine their capacity and ability to care for the residents they admit and should not admit residents whose needs they cannot meet based on the facility's assessment. Accordingly, absent atypical changes of a resident's condition, it is considered rare that a facility properly assessed their capacity and ability to care for a resident then discharged the same resident based on the facility's inability to meet the resident's needs.

Transfers and Discharges

When a facility transfers or discharges a resident under any circumstance, the facility must ensure the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving healthcare facility or provider, or others depending on the individual circumstance. In all cases, a copy of the Notice of Discharge must be sent to the Long-Term Care Ombudsman Program. Be reminded that regulations limit the circumstances when a facility may initiate a transfer or discharge, thus protecting residents from involuntary discharges. Circumstances that do not meet those specified at 42 CFR § 483.15(c)(1)(i) are not permissible.

- In situations where the facility has decided to discharge the resident while the resident is hospitalized, the facility must send a notice of discharge to the resident and resident representative before the discharge and send a copy of the Notice of Discharge to the appropriate regional office of the Long-Term Care Ombudsman Program.

Emergency Transfers

Emergency transfers are temporary in nature and typically based on an emergent need for acute care. In such instances, 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). Not less than monthly, a list of residents temporarily transferred on an emergency basis must be emailed to the appropriate regional office of the Long-Term Care Ombudsman Program. At minimum, the list sent must include the residents' first and last names, date of birth, transfer location, transfer date, and transfer address.

Please note that if a decision is made to discharge such residents, including after a subacute rehabilitation stay, a discharge notice is required, and that notice must be sent to the appropriate regional office of the Long-Term Care Ombudsman Program at the same time it is provided to the resident or their representative. Copies of all notices, including emergency transfers must be emailed to the Long-Term Care Ombudsman Program as soon as is practicable. To facilitate this process, contact information for the Long-Term Care Ombudsman Program is included as an enclosure to this correspondence.

Notice to the Long-Term Care Ombudsman Program

As indicated throughout this correspondence, notice must be made to the Long-Term Care Ombudsman Program for resident transfers or discharges. Please understand that only the completed discharge notice should be provided and that submission of supportive evidence (e.g., care plan, medical record, discharge summary, physician's notes, etc.) is not required and could jeopardize the resident's confidentiality.

Additional Notice Requirements for Residents through the Protection and Advocacy System

Residents with certain disabilities have additional legal and civil protections through the federal and State-authorized Protection and Advocacy agency, Disability Rights New York. Applicable conditions include a diagnosis of mental illness, intellectual disabilities, developmental disabilities, and traumatic brain injury. The services of the Protection and Advocacy Agency are provided without cost to the individual served.

When a discharge or transfer notice is served to subject residents, the agency's contact information must be provided:

Disability Rights New York
279 Troy Road, Suite 9
PMB 236
Rensselaer, New York 12144
Email: Mail@DRNY.org
Telephone: (518) 432-7861 or 1-800-993-8982
Online: www.drny.org
Online Intake: https://www.drny.org/intake.php.

Discharge/Transfer Notices

Throughout regulation, residents are afforded specific rights about what to expect when receiving care from a Nursing Home, and have available Transfer and Discharge Rights that

further outline expectations. Accordingly, provision of a complete notice of discharge or transfer not less than 30 days prior to a transfer or discharge is an important tool for the resident, their representative and/or family, and the facility. The Department makes available the enclosed template Transfer/Discharge Notice for facilities' consideration.

If you have any questions regarding this correspondence, please email nhinfo@health.ny.gov or contact your county's Long-Term Care Ombudsman Program contact as illustrated in the enclosed.

Sincerely,

Stephanie E. Paton, RN, Director
Division of Nursing Home
and ICF/IID Surveillance
Center for Residential Surveillance
Office of Aging and Long-Term Care

Claudette Royal
New York State Ombudsman
Office of the State Long-Term Care Ombudsman
New York State Office for the Aging

Enclosures

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NEW YORK STATE | Department of Health

Questions and Answers Regarding Discharge Notices

Question 1: Should I send supportive information with the discharge notice to the Long-Term Care Ombudsman Program such as care plans, discharge summary, or physician's notes?

Answer 1: No, the discharge notice is the only document that should be provided to the Long-Term Care Ombudsman Program.

Question 2: Where can I obtain the contact information for my local Ombudsman Program?

Answer 2: Please refer to Enclosure 2. Note that all correspondence should be sent to the proper email address for the county where the facility is located.

Question 3: What is the correct agency contact information to be provided on the discharge notice for residents with mental illness or developmental disabilities?

Answer 3:
Disability Rights New York
279 Troy Road, Ste. 9
PMB 236
Rensselaer, New York 12144
Email: Mail@DRNY.org
Telephone: (518) 432-7861 or 1-800-993-8982
Online:www.drny.org
Online Intake: https://www.drny.org/intake.php.

For more information about this protection and advocacy agency, please refer to https://www.drny.org/page/advocacy-18.html.

Question 4: When can I send a list of residents discharged or transferred?

Answer 4: The list of residents can be sent for emergency transfers such as transfer to an acute care setting and must be sent at least monthly to the Long-Term Care Ombudsman Program's email address reflected at Enclosure #2 and include, at minimum, the residents' first and last names, date of birth, transfer location, transfer date, and transfer address.

Please note that if these residents are being discharged, including after a subacute rehabilitation stay, a discharge notice is required. Additionally, such notice must be emailed to the Long-Term Care Ombudsman Program at the same time it is provided to the resident/representative.

Question 5: 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?

Answer 5: 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 Long-Term Care

Questions and Answers Regarding Discharge Notices

Ombudsman Program, 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 they were originally sent to the hospital.

Question 6: The facility has decided to discharge the resident while the resident is still hospitalized. When must the discharge notice be sent, and to whom?

Answer 6: Before the discharge, the facility must send a notice of discharge to the resident and resident representative and send a copy of the discharge notice simultaneously to the appropriate regional office of the Long-Term Care Ombudsman Program utilizing the email address in Enclosure #2.

Question 7: A resident has completed their short-term skilled rehabilitation and requires long-term placement. Does this meet the established regulatory criteria for discharge?

Answer 7: In New York State, with few exceptions, there is no delineation between a short-term rehabilitation and a long-term care bed. Accordingly, discharging for this reason does not meet the regulatory criteria.

Question 8: A resident did not specifically request to be discharged, and the discharge is not aligned with the resident's admission outcomes. Does this meet the established regulatory criteria for discharge?

Answer 8: No.

Question 9: A resident has completed their skilled rehabilitation and is being discharged. May the resident appeal their discharge?

Answer 9: Yes. Residents have the right to appeal any discharge.

Question 10: A resident who has expressed their goal to return to their community-based home recently eloped. Does this meet the regulatory discharge requirements?

Answer 10: No. A resident's expression of a general desire or goal to return to their community-based home, and/or elopement by a resident who is cognitively impaired, is not appropriate notice of their intent to discharge from the facility.

New York State Long Term Care Ombudsman Program Contact Information for Discharge Notices

Instructions: Please identify the county in which the facility is located and direct required discharge notices to the reflected agency's email address. The agency's telephone number is provided for situational outreach.

County	Agency	Email for Discharge Notices	Telephone
Suffolk	Family Service League	Ombudsman@fsl-li.org	(631) 470-6755
Nassau	Family and Children's Association	ombudservice@familyandchildrens.org	(516) 466-9718
Bronx, Kings, Manhattan, Queens, Richmond	Center for the Independence of the Disabled	tdnotice@cidny.org	(888) 855-9807
Putnam, Rockland, Westchester	Long Term Care Community Coalition - Tri-County Long Term Care Ombudsman Program	tricounty.ltcop@ltccc.org	(914) 500-3406
Columbia, Dutchess, Greene, Orange, Sullivan, Ulster	Long Term Care Community Coalition-Hudson Valley LTC Ombudsman Program	ombudsman@hudsonvalleyltcop.org	(845) 229-4680 x102
Albany, Fulton, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	Catholic Charities Tri-County Services	dischargenotice@cathcharschdy.org	(518) 372-5667
Clinton, Essex, Franklin	North Country Center for Independence	ombudsman@ncci-online.com	(518) 562-1732
Jefferson, Lewis, St. Lawrence	Northern Regional Center for Independent Living	Ombudsman@nrcil.net	(315) 785-8703 x228
Herkimer, Madison, Oneida, Otsego	Resource Center for Independent Living	Ombudsman@RCIL.com	(315) 272-1872
Cayuga, Cortland, Onondaga, Oswego	ARISE Child and Family Service	ombudsman@ariseinc.org	(315) 671-5108
Broome, Chenango, Delaware, Tioga	Action for Older Persons	dischargenotice@actionforolderpersons.org	(607) 722-1251
Chemung, Schuyler, Tompkins	Tompkins County Office for the Aging	ltcombudsman@tompkins-co.org	(607) 274-5498
Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates	Lifespan	Ombudsman@lifespan-roch.org	(585) 244-8400 x114
Allegany, Steuben	AIM Independent Living Center	dischargenotice@aimcil.com	(607) 962-8225 x112
Cattaraugus, Chautauqua, Erie, Niagara	People Inc.	LTCOmbudsman@people-inc.org	(716) 817-9222