

To: Nursing Facility Providers
From: Sherry Culp, KY LTC State Ombudsman
Subject: Clarification on Transfer or Discharge Notices to KY State Long-Term Care Ombudsman
Date: 10/17/17

The regulation at 42 CFR 483.15(c)(3)(i) requires, in part, that before a facility transfers or discharges 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....” The facility must also “...send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.” Sending a copy of the notice to a representative of the Office of the State Long-Term Care (LTC) Ombudsman provides added protection to residents and ensures the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges. Specific requirements for transfers and discharges are outlined below:

A. Facility-Initiated Transfers and Discharges

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 in a list of residents on a monthly basis.

B. Resident-Initiated Transfers and Discharges

A 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. 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. For resident-initiated transfers or discharges, sending a copy of the notice to the ombudsman is not required.

Excerpts from CMS memo Ref: S&C 17-27-NH on May 12, 2017

Additional information

A facility-initiated transfer or discharge is 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.

A resident-initiated transfer or discharge, means the resident or, if appropriate, the resident's 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.

The new requirement to notify the ombudsman and the notice requirements in general, only apply to facility-initiated transfers and discharges, not resident-initiated transfers and discharges.

The purposes of sending a copy of a transfer or discharge notice to the State LTC Ombudsman is to provide added protection to residents and keep the ombudsman informed of facility practices and activities. The copy of the notice must be sent to the ombudsman when the facility initiates the transfer or discharge. This includes emergency transfers to an acute care facility. In general, notice must be sent to the ombudsman at the same time that notice is provided to the resident and resident representative. Ideally, 30 days in advance. However, for emergency transfers, notice may be provided to the resident and resident representative as soon as practicable, and notice to the ombudsman may also be sent when practicable, such as in a list of residents on monthly basis.

There's no specific form for facilities to use with sending a list of residents to the ombudsman. But the list must meet the requirements related to contents of the notice. Again, providing a notice of transfer or discharge and sending a copy of the notice to the ombudsman are not required for resident-initiated transfers or discharges.

For short-stay residents such as those completing skilled rehabilitation, the discharge could be facility or resident-initiated, depending on circumstances.

How to determine whether a transfer or discharge is facility- or resident-initiated. While short-stay residents who have completed skilled rehabilitation may often be considered resident-initiated discharges, this is not automatically the case. The discharge of the resident must meet the definition of a resident-initiated transfer or discharge, and evidence in the medical record must support that the transfer or discharge was resident-initiated. There should be documentation or evidence of the resident or resident representative, verbal or written notice of intent to leave the facility, a discharge care plan, and documented discussions with the residents or, if appropriate, his/her representative containing details of discharge planning and arrangements for post-discharge

Additional information can be found at the CMS website: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Guidance-for-Laws-and-Regulations/Nursing-Homes.html> and <https://www.cms.gov/Outreach-and-Education/Outreach/NPC/Downloads/2017-09-07-Dementia-Care-in-Nursing-Homes-Call-Transcript.pdf>

Notices should be sent to the Kentucky LTC Ombudsman, Sherry Culp at nhoa@ombuddy.org
Email or call 859-277-9215 if you have further questions.