

Readmissions, Transfers and Discharges – Ways to Ensure Compliance

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Transfer and Discharge

- ▶ Definition:

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.

42 Code of Federal Regulations (“C.F.R.”) § 483.5

Transfer, Discharge or Readmission

- ▶ **Transfer –**
 - The resident expects to return to the facility.
- ▶ **Discharge –**

The return to the original facility is not expected.
- ▶ **Readmission –**
 - The resident returns to the facility, typically within 30 days.

Facility–Initiated vs. Resident–Initiated Transfer or Discharge

- ▶ Facility–initiated transfer or discharge is when the resident objects to or 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 is when the resident and/or representative has provided verbal or written notice of intent to leave the facility (not a general expression of a desire to return home or elopement of residents with cognitive impairment).

- State Operations Manual (“SOM”), App. PP,
 - Rev. 10–21–22, under F622.

Transfer and Discharge

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident 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 the individuals in the facility would otherwise be endangered;

Transfer and Discharge

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident unless –

(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. Non-payment 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.

42 C.F.R. § 483.15(c)(1)(i)

Nonpayment as a Basis for Discharge

- ▶ It is the responsibility of the facility to notify the resident of their change in payment status, and the facility should ensure the resident has the necessary assistance to submit any third party paperwork.
- ▶ If there is evidence of exploitation or misappropriation of the resident funds by the representative, the facility should take steps to notify the appropriate authorities on the resident's behalf, before discharging the resident.
- ▶ The resident cannot be discharged for nonpayment while a determination on the resident's Medicaid eligibility is pending.

SOM, App. PP, F622

Transfer and Discharge

- ▶ The facility may not transfer or discharge the resident while the appeal is pending,..., when a resident exercises his or her right to appeal or transfer or discharge notice...unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility.
- ▶ The facility must document the danger that failure to transfer or discharge would pose.



42 C.F.R. § 483.15(c)(1)(ii)

Documentation

- ▶ When the facility transfers or discharges a resident under any of the circumstances from paragraphs (c)(1)(A) through (F), the 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 institution or provider.
- ▶ 42 C.F.R. § 483.15(c)(2) – [Emphasis added.]

Documentation must include –

- ▶ In the medical record –
- ▶ (A) Basis for the transfer per paragraph (c)(1)(i)
- ▶ (B) In the case of paragraph (c)(1)(i)(A) –(*necessary for the resident's welfare and the resident's needs cannot be met in the facility*)
 - – The specific 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).

• 42 C.F.R. § 483.15(c)(2)(i)

Documentation must include –

- ▶ (ii) The documentation required by paragraph (c)(2)(i) – *(necessary for the resident's welfare and the resident's needs cannot be met in the facility)*
 - – Must be made by the resident's physician when the transfer or discharge is necessary per (c)(1)(A) (resident's welfare) or (B) (resident's health has improved); and
 - – Must be made by a physician when transfer or discharge is necessary per (c)(1)(i)(C) (safety of individuals is endangered) or (D) (health of individuals would otherwise be endangered).

• 42 C.F.R. § 483.15(c)(2)(ii) [Emphasis added.]

Information to the Receiving Provider

- ▶ Information provided to the receiving provider must include, at a minimum –
- ▶ (A) Contact information of the practitioner responsible for the care of the resident;
- ▶ (B) Resident representative information including contact information;
- ▶ (C) Advance directive information;
- ▶ (D) All special instructions or precautions for ongoing care, as appropriate;
- ▶ (E) Comprehensive care plan goals;
- ▶ (F) All other necessary information, including a copy of the resident's discharge summary, and any other documentation to ensure a safe and effective transition of care.

Facility–Initiated vs. Resident–Initiated

- ▶ 42 C.F.R. § 483.15(c)(1) and (c)(2)(i)–(ii) only apply to facility–initiated discharges, not resident–initiated.
- ▶ 42 C.F.R. § 483.15(c)(2)(iii) – (information to the receiving provider) applies to both facility and resident–initiated transfers.
- ▶ For resident–initiated discharges, the medical record should contain evidence of the resident’s or representative’s verbal or written notice of intent to leave the facility; discharge plan, documented discussions containing details of discharge planning and arrangements for post–discharge care. Comp. Care Plan should have goals and outcomes in alignment with discharge.
- ▶ If leave against medical advice (AMA) as example, will investigate to see if pressured and will be considered a facility–initiated discharge. SOM, App. PP, F622.

Medicare

- ▶ If resident is a short-term, skilled rehabilitation under Medicare, completion of rehabilitation and communicates is not ready to leave facility, if facility proceeds with discharge it is a facility-initiated discharge. Requirements of 42 C.F.R. § 483.15(c)(1) and (c)(2)(i)–(ii) must be met.
- ▶ Where resident's Medicare coverage may be ending, facility should offer ability to remain including paying privately; provide with necessary assistance to apply for Medicaid coverage, with explanation that if denied Medicare be responsible for payment for all days and if eligible, and no bed available, discharged to another facility with available Medicaid beds.
- ▶ The resident cannot be discharged for nonpayment
- ▶ while resident's Medicaid eligibility is pending.

SOM, App. PP, F622.

Emergency Transfer to Acute Care

- ▶ Generally considered facility-initiated transfers, not discharges, because the resident is typically expected to return.
- ▶ If a facility initiates discharge when the resident is at the hospital following an emergency transfer, the facility must have evidence that the resident's status at time the resident seeks to RETURN to the facility (not at time transferred to the acute care) meets one of the criteria of 42 C.F.R. § 483.15(c)(1)(i)(A) through (D).
- ▶ The resident has the right to return to the facility pending an appeal unless the return would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that it would pose.

SOM, App. PP, F622.

Notice Before Transfer

- ▶ Before a facility transfers or discharges a resident, the facility must –
- ▶ (i) 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 send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.
- ▶ (ii) Record the reasons for the transfer or discharge in the resident's medical record per (c)(2); and
- ▶ (iii) Include in the notice items per (c)(5).

42 C.F.R. § 483.15(c)(3) [Emphasis added.]

Timing of the Notice

- ▶ (i) Except as per paragraphs (c)(4)(ii) and (8), the notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged.
- ▶ (ii) Notice must be made as soon as practicable before transfer or discharge when –
 - ▶ (A) safety of individuals would be endangered per (c)(1)(i)(C);
 - ▶ (B) health of individuals would be endangered per (c)(1)(i)(D);
 - ▶ (C) resident's health improves sufficiently to allow a more immediate transfer or discharge per (c)(1)(i)(B);
 - ▶ (D) immediate transfer or discharge is required by the resident's urgent medical needs per (c)(1)(i)(A); or
 - ▶ (E) resident has not resided in the facility for 30 days.

42 C.F.R. § 483.15(c)(4) [Emphasis added.]

Contents of the Notice

- ▶ The written notice must include –
 - ▶ (i) The reason for the transfer or discharge;
 - ▶ (ii) The effective date of transfer or discharge;
 - ▶ (iii) The location to which the resident is transferred or discharged;
 - ▶ (iv) A statement of the resident's appeal rights, including the name, address (mailing and e-mail), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing and submitting appeal hearing request;
 - ▶ (v) The name, address (mailing and e-mail) and telephone number of the Office of the State Long-Term Care Ombudsman;

Contents of the Notice

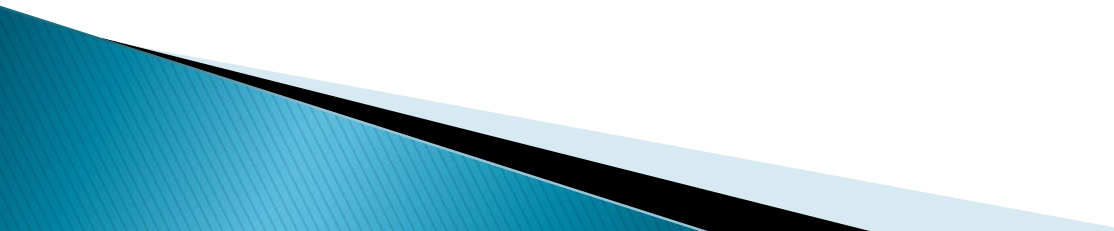
- ▶ The written notice must include –
 - ▶ (vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and e-mail address and telephone number of agency responsible for protection and advocacy of individuals with developmental disabilities; and
 - ▶ (vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and e-mail address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder.

■ 42 C.F.R. § 483.15(c)(5)

Changes to the Notice

- ▶ If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice *as soon as practicable* once the updated information becomes available.

42 C.F.R. § 483.15(c)(6) [Emphasis added.]



Orientation for Transfer or Discharge

A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

This orientation must be provided in a form and manner that the resident can understand.



42 C.F.R. § 483.15(c)(7)

Facility Closure

- ▶ In the case of facility closure, the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.70(l).

▶ 42 C.F.R. § 483.15(c)(8)

Room Changes in Distinct Part

- ▶ Room changes in a facility that is a composite distinct part (per § 483.5) are subject to § 483.10(e)(7) (orientation for transfer or discharge) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

▶ 42 C.F.R. § 483.15(c)(9)

Notice of Bed-Hold and Return

- ▶ Notice before transfer – Before the nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representatives that specifies
 - ▶ (i) The duration of the state bed-hold, if any, where the resident is permitted to return and resume residence in the nursing facility;
 - ▶ (ii) The reserve bed payment policy;
 - ▶ (iii) The nursing facility's policies regarding bed-holds;
 - ▶ (iv) The information per paragraph (e)(1) (Permitting residents to return to the facility).

42 C.F.R. § 483.15(d)(1)

Notice of Bed-Hold and Return

- ▶ Two Notices
- ▶ –First one before transfer (typically upon admission or revisions to plan);
- ▶ – Second one at the time of transfer for hospitalization or therapeutic leave.

▶ 42 C.F.R. § 483.15(d)(1) and (2)

Timely Comply with a Hearing Decision

- ▶ A long-term health care facility shall timely comply with a hearing decision, as issued by OAHA, that finds that the long-term health care facility improperly transferred, discharged, or refused to readmit a resident.
- ▶ Welfare and Institutions Code (“WIC”) § 14126.029(b)
- ▶ “Timely” means within three calendar days of a long-term health care facility being served a hearing decision.

▶ WIC § 14126.029(a)(2)

Penalties for Failure to Timely Comply

- ▶ (1) If a long-term health care facility fails to timely comply with a hearing decision issued by OAHA, the department may assess penalties.
 - ▶ (2) Commencing on the 4th calendar day after the date of service of the hearing decision, the department may assess a penalty of \$750 for each calendar day the facility fails to comply with the decision.
 - ▶ (3) For each hearing decision, the penalties shall not exceed \$75,000.
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- ▶ WIC § 14126.029(c)(1)(2) and (3)

Demonstrate Compliance with Decision

- ▶ To demonstrate compliance with a hearing decision, a long-term health care facility shall file a certification of compliance with the department within three calendar days of the date the hearing decision is served on that facility, in a form and manner as established by the department.
- ▶ The certification shall specify the date of service of the hearing decision and the date the resident was readmitted to the facility or the facility otherwise complied with the decision.
- ▶ The department shall make the certification of compliance available on its website.

Penalties

Failure to file a Certificate of Compliance within three (3) calendar days of service of the hearing decision can subject a facility to penalties.

WIC § 14126.029(e)

Assessed penalties may be deducted from any Medi-Cal payments to the facility until paid in full.

▶ **WIC § 14126.029(f)(1)**

For any merger, acquisition or change of ownership, the successor long-term health care facility shall be responsible for outstanding penalties.

WIC § 14126.029(f)(2)



Waiver of Penalties

- ▶ The department may waive all or a portion of the penalties if a facility petitions for a waiver and the department determines, in its sole discretion, that both criteria are met:
- ▶ (1) The facility complied with the hearing decision or that sufficient corrective action has been taken to remediate the underlying conduct;
- ▶ (2) The facility demonstrated to the department's satisfaction that imposing the full amount of the penalties has a high likelihood of creating an undue financial hardship or creates a significant difficulty in providing services to Medi-Cal beneficiaries.

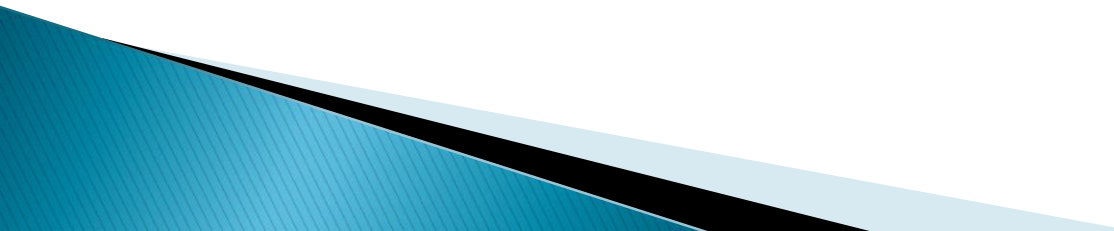
WIC § 14126.029(g)(1) and (2)

Hearing

A hearing shall afford the resident and the facility due process, including:

- Direct and cross-examination of witnesses under oath;**
- Allowing presentation of documents as exhibits;**
- Making a recording of all sessions of the proceedings of sufficient quality to allow for the preparation of a written transcript.**

WIC § 14126.029(n)



Appeal

Any penalty is appealable only to the superior court of the county where the facility is located.

WIC § 14126.029(i)

Any penalty per this section does not prohibit any state or federal enforcement action for violation of improper transfer or discharge or failure to readmit.


WIC § 14126.029(j)

If the hearing decision is reversed on appeal through judicial review, the department shall refund to the facility any penalties paid by the facility associated with the reversed hearing decision.

WIC § 14126.029(m)



Reminders

- **Cross–refer with Regulation on Transfer or Discharge.**
 - **Document in Medical Record.**
 - **Documentation by appropriate Physician.**
 - **Timing and Content of Notice.**
 - **Provide Notice to Ombudsman.**
 - **Communicate Information to Receiving Provider.**
 - **Communicate in Manner for Resident to Understand.**
 - **Provide Sufficient Preparation and Orientation – in writing as well.**
 - **Respond Timely to a Decision.**
 - **Timely Submit Certificate of Compliance to a Decision.**
 - **Timely File any Appeal.**
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Questions?