

Nursing Home Federal and State Requirements

NURSING HOME FEDERAL REQUIREMENTS

F201

42 CFR §483.12(a)(2) Transfer and Discharge Requirements

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

- (i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (ii) 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;
- (iii) The safety of individuals in the facility is endangered;
- (iv) The health of individuals in the facility would otherwise be endangered;
- (v) 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. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident only allowable charges under Medicaid; or
- (vi) The facility ceases to operate.

F203

42 CFR §483.12(a)(4) Notice Before Transfer

Before a facility transfers or discharges a resident, the facility must--

- (i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
 - (ii) Record the reasons in the resident's clinical record; and
 - (iii) Include in the notice the items described in paragraph (a)(6) of this section.
- §483.12(a)(5) Timing of the notice.

(5) Timing of the notice.

- (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
- (ii) Notice may be made as soon as practicable before transfer or discharge when--

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- (A) The safety of the individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section;
- (B) The health of individuals in the facility would be endangered, under (a)(2)(iv) of this section;
- (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(2)(ii) of this section;
- (D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(2)(i) of this section; or

(E) A resident has not resided in the facility for 30 days.

42 CFR §483.12(a)(6) Contents of the notice

The written notice specified in paragraph (a)(4) of this section must include the following:

- (i) The reason for 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 that the resident has the right to appeal the action to the State;
- (v) The name, address and telephone number of the State long term care ombudsman;
- (vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
- (vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

WISCONSIN ADMINISTRATIVE CODE: DHS 132 (Nursing Homes)

A facility licensed under ch. DHS 132, Wis. Admin. Code, must comply with the following requirements:

DHS 132.53 Transfers and discharges. (1) SCOPE. This section shall apply to all resident transfers and discharges, except that in the event of conflict with s. 49.45 (6c) (c) and (d), 49.498 (4) or 50.03 (5m) or (14), Stats., the relevant statutory requirement shall apply.

(2) CONDITIONS.

- (a) Prohibition and exceptions. No resident may be discharged or transferred from a facility, except:
 - 1. Upon the request or with the informed consent of the resident or guardian;
 - 2. For nonpayment of charges, following reasonable opportunity to pay any deficiency;
 - 3. If the resident requires care other than that which the facility is licensed to provide;
 - 4. If the resident requires care which the facility does not provide and is not required to provide under this chapter;
 - 5. For medical reasons as ordered by a physician;
 - 6. In case of a medical emergency or disaster;
 - 7. If the health, safety or welfare of the resident or other residents is endangered, as documented in the resident's clinical record;
 - 8. If the resident does not need nursing home care;
 - 9. If the short-term care period for which the resident was admitted has expired; or
 - 10. As otherwise permitted by law.

(b) Alternate placement.

1. Except for transfers or discharges under par. (a) 2. and 6., for nonpayment or in a medical emergency, no resident may be involuntarily transferred or discharged unless an alternative placement is arranged for the resident. The resident shall be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

2. No resident may be involuntarily transferred or discharged under par.

(a) 2. for nonpayment of charges if the resident meets both of the following conditions:

a. He or she is in need of ongoing care and treatment and has not been accepted for ongoing care and treatment by another facility or through community support services; and

b. The funding of the resident's care in the nursing home under s. 49.45 (6m), Stats., is reduced or terminated because either the resident requires a level or type of care which is not provided by the nursing home or the nursing home is found to be an institution for mental diseases as defined under 42 CFR 435.1009.

(3) PROCEDURES.

(a) Notice. The facility shall provide a resident, the resident's physician and, if known, an immediate family member or legal counsel, guardian, relative or other responsible person at least 30 days notice of transfer or discharge under sub. (2) (a) 2. to 10., and the reasons for the transfer or discharge, unless the continued presence of the resident endangers the health, safety or welfare of the resident or other residents. The notice shall also contain the name, address and telephone number of the board on aging and long-term care. For a resident with developmental disability or mental illness, the notice shall contain the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

(b) Planning conference.

1. Unless circumstances posing a danger to the health, safety or welfare of a resident require otherwise, at least 7 days before the planning conference required by subd. 2., the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, shall be given a notice containing the time and place of the conference, a statement informing the resident that any persons of the resident's choice may attend the conference, and the procedure for submitting a complaint to the department.

2. Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to any involuntary transfer or discharge under sub. (2) (a) 2. to 10., a planning conference shall be held at least 14 days before transfer or discharge with the resident, guardian, if any, any appropriate county

agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements and develop a relocation plan which includes at least those activities listed in subd. 3.

3. Transfer and discharge activities shall include:

- a. Counseling regarding the impending transfer or discharge;
- b. The opportunity for the resident to make at least one visit to the potential alternative placement, if any, including a meeting with that facility's admissions staff, unless medically contraindicated or waived by the resident;
- c. Assistance in moving the resident and the resident's belongings and funds to the new facility or quarters; and
- d. Provisions for needed medications and treatments during relocation.

4. A resident who is transferred or discharged at the resident's request shall be advised of the assistance required by subd. 3. and shall be provided with that assistance upon request.

(c) Records. Upon transfer or discharge of a resident, the documents required by s. DHS 132.45 (5) (L) and (6) (h) shall be prepared and provided to the facility admitting the resident, along with any other information about the resident needed by the admitting facility.

(6) APPEALS ON TRANSFERS AND DISCHARGES.

(a) *Right to appeal.*

1. A resident may appeal an involuntary transfer or discharge decision.
2. Every facility shall post in a prominent place a notice that a resident has a right to appeal a transfer or discharge decision. The notice shall explain how to appeal that decision and shall contain the address and telephone number of the nearest bureau of quality assurance regional office. The notice shall also contain the name, address and telephone number of the state board on aging and long-term care or, if the resident is developmentally disabled or has a mental illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.
3. A copy of the notice of a resident's right to appeal a transfer or discharge decision shall be placed in each resident's admission folder.
4. Every notice of transfer or discharge under sub. (3) (a) to a resident, relative, guardian or other responsible party shall include a notice of the resident's right to appeal that decision.

(b) *Appeal procedures.*

1. If a resident wishes to appeal a transfer or discharge decision, the resident shall send a letter to the nearest regional office of the department's division of quality assurance within 7 days after receiving a notice of transfer or discharge from the facility, with a copy to the facility administrator, asking for a review of the decision.
2. The resident's written appeal shall indicate why the transfer or discharge should not take place.

3. Within 5 days after receiving a copy of the resident's written appeal, the facility shall provide written justification to the department's division of quality assurance for the transfer or discharge of the resident from the facility.
4. If the resident files a written appeal within 7 days after receiving notice of transfer or of discharge from the facility, the resident may not be transferred or discharged from the facility until the department's division of quality assurance has completed its review of the decision and notified both the resident and the facility of its decision.
5. The department's division of quality assurance shall complete its review of the facility's decision and notify both the resident and the facility in writing of its decision within 14 days after receiving written justification for the transfer or discharge of the resident from the facility.
6. A resident or a facility may appeal the decision of the department's division of quality assurance in writing to the department of administration's division of hearings and appeals within 5 days after receipt of the decision.
Note: The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison, Wisconsin 53707.
7. The appeal procedures in this paragraph do not apply if the continued presence of the resident poses a danger to the health, safety or welfare of the resident or other residents.