

When a resident occupies a bed in a distinct part NF that participates in Medicaid and not in Medicare, he or she may not be moved involuntarily to another part of the institution by the facility (or required to be moved by the State) solely for the purpose of assuring Medicare eligibility for payment. Such moves are only appropriate when they occur at the request of a resident (for example, when a privately paying Medicare beneficiary believes that admission to a bed in a Medicare-participating distinct part of the institution may result in Medicare payment).

See Guidelines, §483.12 for further discussion regarding transfers.

For transfers of residents between Medicare or Medicaid approved distinct parts:

- Is there a documented medical reason for the transfer?
- Was the resident transferred because of a change in payment source?
- If a Medicare or Medicaid resident is notified that he/she is no longer eligible, does the facility transfer the resident? Did the facility give the resident the opportunity to refuse the transfer? How? What happened?

Ask the local ombudsman about facility compliance with transfer requirements. See also §483.12, Criteria for Transfer.

F201

§483.15(c) Transfer and *discharge-*

(1) *Facility requirements-*

(i) 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.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to § 431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to § 431.220(a)(3) of this chapter, 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.

F202

§483.15(c)(2) Documentation.

[§483.15(c)(2)(i) and (c)(iii) will be implemented beginning November 28, 2017 (Phase 2)]

When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs *(c)(1)(i)(A)* through *(F)* of this section, *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 care institution or provider.*

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

(B) In the case of paragraph (c)(1)(i)(A) of this section, 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).

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—

(A) The resident's physician when transfer or discharge is necessary under paragraph (c) (1) (A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

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

- (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 residents discharge summary, consistent with §483.21(c)(2) as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.*

Interpretive Guidelines

If transfer is due to a significant change in the resident's condition, but not an emergency requiring an immediate transfer, then prior to any action, the facility must conduct the appropriate assessment to determine if a new care plan would allow the facility to meet the resident's needs. (See F274, for information concerning assessment upon significant change.)

Conversion from a private pay rate to payment at the Medicaid rate does not constitute non-payment.

Refusal of treatment would not constitute grounds for transfer, unless the facility is unable to meet the needs of the resident or protect the health and safety of others.

Documentation of the transfer/discharge may be completed by a physician extender unless prohibited by State law or facility policy.

If a nursing home discharges a resident or retaliates due to an existing resident's failure to sign or comply with a binding arbitration agreement, the State and Region may initiate an enforcement action based on a violation of the rules governing resident discharge and transfer. A current resident is not obligated to sign a new admission agreement that contains binding arbitration.

Procedures

During closed record review, determine the reasons for transfer/discharge.

If the entity to which the resident was discharged is another long term care facility, evaluate the extent to which the discharge summary and the resident's physician justify why the facility could not meet the needs of this resident.

Probes

Do records document accurate assessments and attempts through care planning to address resident's needs through multi-disciplinary interventions, accommodation of individual needs and attention to the resident's customary routines?

Did the resident's physician document the record if:

- o The resident was transferred/discharged for the sake of the resident's welfare and the resident's needs could not be met in the facility (e.g., a resident develops an acute condition requiring hospitalization)? or
- o The resident's health improved to the extent that the transferred/discharged resident no longer needed the services of the facility.

Did a physician document the record if residents were transferred because the health of individuals in the facility is endangered?

Do the records of residents transferred/discharged due to safety reasons reflect the process by which the facility concluded that in each instance transfer or discharge was necessary? Did the survey team observe residents with similar safety concerns in the facility? If so, determine differences between these residents and those who were transferred or discharged.

Look for changes in source of payment coinciding with transfer. If you find such transfer, determine if the transfers were triggered by one of the criteria specified in §483.12.

- Ask the ombudsman if there were any complaints regarding transfer and/or discharge. If there were, what was the result of the ombudsman's investigation?

F203

§483.15(c)(3) 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 *in accordance with paragraph (c)(2) of this section*; and**
- (iii) Include in the notice the items described in paragraph (c)(5) of this section.**

§483.15(c)(4) Timing of the notice.

(i) Except *as* specified in paragraphs *(c)(4)(ii)* and *(c)(8)* of this section, the notice of transfer or discharge required under this section 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) The safety of individuals in the facility would be endangered under paragraph *(c)(1)(ii)(C)* of this section;

(B) The health of individuals in the facility would be endangered, under *paragraph (c)(1)(ii)(D)* of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph *(c)(1)(ii)(B)* of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph *(c)(1)(ii)(A)* of this section; or

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

§483.15(c)(5) Contents of the notice.

The written notice specified in paragraph

(b)(3) 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 of the resident's appeal *rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;*

(v) The name, address *(mailing and email)* and telephone number of *the Office of the State Long-Term Care Ombudsman;*

(vi) For nursing facility residents with *intellectual and developmental disabilities or related disabilities*, the mailing *and email* address and telephone number of the agency responsible for the protection and advocacy of individuals *with developmental disabilities* established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act *of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.);* and

(vii) For nursing facility residents *with a mental disorder or related disabilities*, the mailing *and email* address and telephone number of the agency responsible

for the protection and advocacy of individuals *with a mental disorder* established under the Protection and Advocacy for Mentally Ill Individuals Act.

§483.15 (c)(6) 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.

§483.15 (c)(8) Notice in advance of facility closure.

In the case of facility closure, the individual who is 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).

Procedures

If the team determines that there are concerns about the facility's transfer and discharge actions, during closed record review, look at notices to determine if the notice requirements are met, including:

- Advance notice (either 30 days or, as soon as practicable, depending on the reason for transfer/discharge);
 - Reason for transfer/discharge;
 - The effective date of the transfer or discharge;
 - The location to which the resident was transferred or discharged;
 - Right of appeal;
 - How to notify the ombudsman (name, address, and telephone number); and
 - How to notify the appropriate protection and advocacy agency for residents with mental illness or intellectual disabilities (mailing address and telephone numbers).
 - Determine whether the facility notified a family member or legal representative of the proposed transfer or discharge.
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