



Resident Transfer or Discharge

Purpose

This guideline is applicable to all licensed nursing facilities, whether or not they accept Medicare or Medicaid reimbursement, and is intended to clarify the reasons and actions a facility shall take when a resident is to be relocated.

Introduction

While each resident has a right to remain in the facility to which they are admitted, there are circumstances under which a nursing facility may transfer or discharge a resident.

Allowable reasons for discharge/transfer of a resident¹:

1. When the facility can no longer meet the resident's medical needs² as documented by the resident's physician in the resident's medical record prior to the transfer/discharge;
2. When the resident's health has improved so that the resident no longer needs the services provided by the facility as documented by the resident's physician in the resident's medical record;
3. When the health and safety of the resident, other residents or staff is endangered as documented by a physician in the resident's medical record prior to the transfer/discharge;
4. When 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;
5. With the resident's informed voluntary consent to the transfer or discharge³; or
6. When the facility ceases to operate.

However, even in these situations, residents have the right to challenge a facility's proposal for a transfer or discharge through processes spelled out in law.

Definitions

"Discharge" means the relocation of a resident out of a licensed nursing facility to the community, regardless of the resident's destination, including assisted living or hospice facilities.

¹ § 32.1-138.1 of the Code of Virginia and 42 CFR 483.12 (a)

² A resident exercising their right to refuse treatment does not constitute grounds for a transfer unless the facility is unable to meet the needs of the resident or protect the health and safety of others.

³ If the resident is incapable of providing consent, with the informed voluntary consent of the resident's legal representative.

Virginia Department of Health
Office of Licensure and Certification

“Transfer” means the movement of a resident from one licensed nursing facility to another nursing facility or hospital. If a facility is federally certified, *transfer* also means the movement of a resident from one *certified* distinct part of a nursing facility to another certified distinct part of the same nursing facility. *Transfer* does not include the movement of a resident from one bed to another, unless that resident is moving from one distinct part of a facility to another distinct part of the same facility⁴.

Note: These terms are frequently interchanged, the result is the same – the resident is no longer served by the facility.

“Involuntary transfer/discharge” means a transfer or discharge that is not initiated by the resident or their legal representative.

“Voluntary transfer/discharge” means a transfer or discharge initiated by the resident, the resident's legal representative or the facility with the knowledge and consent of the resident or the resident's legal representative.

“Bed-hold” means the period of time for which a resident elects to pay to hold a bed in order to return to the same bed in the facility after hospitalization or therapeutic leave. Two notices of a facility's bed-hold policy are required. The first notice should be given at the time of admission to the facility and at any time the policy is updated. The second notice, specifying the duration of the bed-hold, shall be issued in conjunction with the notice of transfer at the time of the transfer.

General Information

- A. Each facility shall implement a written plan to assure the orderly and safe transfer/discharge of a resident. The plan should include, but is not limited to:
 - 1. Recognizing the resident's (or the resident's legal representative) right to choose his or her own service providers and to be consulted in choosing another facility;
 - 2. Considering the recommendations of the resident's attending physician;
 - 3. Prompt notification of the facility's policy regarding readmission to the facility, to include returning to the same room or bed (i.e., bed-hold);
 - 4. Placement appropriate for the resident's needs;
 - 5. Assisting the resident or legal representative in locating and coordinating the services needed for a smooth transition;
 - 6. Providing sufficient preparation and orientation to residents and their legal representatives to ensure safe and orderly transfer/discharge from the facility; and
 - 7. Assuring optimum placement is made the first time, insofar as possible.

- B. Before a facility transfers/discharges a resident, the facility must notify the resident (or legal representative) and the Ombudsman program of the move.
 - 1. The notice shall be in writing and in a language and manner the resident (or representative) understands and shall:

⁴ For example: From/to private pay to/from Medicare; From/to Medicare to/from Medicaid

Virginia Department of Health
Office of Licensure and Certification

- a. Contain the reason for the action taken;
 - b. The 6 allowable reasons listed in the introduction;
 - c. The effective date of the action;
 - d. The address of the receiving location;
 - e. The phone number for the VDH Office of Licensure and Certification Complaint hot-line;
 - f. The name and phone number of the State Long Term Care Ombudsman;
 - g. If applicable, the name and phone number of the Virginia Office for Patient Advocacy for residents with developmental disabilities or mental illness.
2. Regardless of payment source, the notice shall include Information on filing an appeal of the facility's decision with the Virginia Department of Medical Assistance Services (DMAS).
Note: A resident's appeal to DMAS shall stay the facility's transfer/discharge pending the outcome of the appeal decision and notice of that final decision is received by the resident or the resident's legal representative and the nursing facility.
 3. A copy of the written notice shall be placed in the resident's record.
- C. When a resident is to be transferred/discharged for Allowable Reasons 1 through 3, the residents' medical record shall include:
1. The documentation by the resident's attending physician⁵ when the transfer or discharge is necessary for Allowable Reasons 1 and 2.
 2. The documentation by a physician when the transfer or discharge is necessary for Allowable Reason 3.⁶
- D. Except when the residents health requires immediate emergency hospitalization, the resident, the resident's legal representative, and the Ombudsman program shall receive notice at least 5 days prior⁷ to the discharge/transfer when:
1. The safety of the individuals in the facility would be endangered (See Allowable Reason 3)
 2. The health of individuals in the facility would be endangered (see Allowable Reason 3)
 3. The resident's health improves sufficiently to allow a more immediate transfer/discharge (See Allowable Reason 2)
 4. An immediate transfer or discharge is required by the resident's urgent medical needs (see Allowable Reason 1) or
 5. A resident has not resided in the facility for 30 days.

For all other transfers/discharges (Allowable Reason 1 and 4 through 6), the facility shall provide written notice at least 30 days prior to the resident's transfer/discharge.

⁵ The physician identified by the resident or the resident's legal representative as having the primary responsibility in determining the delivery of the resident's medical care. See 12VAC5-371-10

⁶ If the resident's attending physician is not available, the facility's Medical Director in conjunction with the Director of Nursing shall be consulted

⁷ §32.1-138.1 C (at least 5 days notice) supersedes 42 CFR 483.12 (as soon as practical)

Virginia Department of Health
Office of Licensure and Certification

- E. Except in cases of immediate emergency hospitalization, the facility shall not transfer/discharge a resident without prior consultation with:
 - 1. The resident;
 - 2. The resident's legal representative, if applicable; and
 - 3. The resident's attending physician. If the resident's attending physician is not available, the facility's Medical Director in conjunction with the Director of Nursing shall be consulted

- F. The facility administrator or appropriate designee shall discuss an involuntary transfer/discharge with the resident or resident's legal representative. The discussion shall include an explanation of the reason for the involuntary transfer/discharge. The discussion, including the names of the persons present, shall be documented in the resident's medical record.

- G. In addition to verbally communicating with the receiving location, the facility shall provide written documentation regarding the resident and the reasons or causes for the intended move. Use of the Universal Transfer form is encouraged, but not mandated, as long as the information requested in the Universal Transfer form is included in the written documentation to the receiving facility. See Appendix A.

Notice of Readmission and Bed-Hold⁸ for any bed certified for Medicare and/or Medicaid

- H. In addition to the written transfer/discharge notice, the facility shall inform the resident (or legal representative) of the facility's readmission policy, including the facility's bed-hold policy, when a resident is transferred to the hospital or takes therapeutic leave.

NOTE: A facility is not obligated to hold a bed for a resident unless the resident agrees to pay for the bed for the duration of their absence from the facility.

- I. The facility shall implement a written policy that allows a resident to be readmitted to the facility immediately upon the first available bed in a semi-private room if that resident:
 - 1. Requires the services provided by the facility; and
 - 2. Is eligible for Medicaid services.

- J. The facility shall readmit resident's with outstanding Medicaid balances, but may transfer that resident if the facility can demonstrate that non-payment of charges exists and documentation and notice requirements are followed pursuant to 42 CFR 483.12 (b)(3).

Discharge for nonpayment of facility stay

- J. Nursing facilities shall implement separate procedures for collection for non-payment of facility stay or services. The procedure shall include, but is not limited to:

⁸ Model Bed-Hold notices can be found at: <http://www.vdh.virginia.gov/OLC/Laws/index.htm> and scrolling to Nursing Facilities.

Virginia Department of Health
Office of Licensure and Certification

1. Allowing no fewer than three written notices of non-payment prior to taking action to discharge a resident. Such notices shall not be less than 15 days apart;
 2. Discharge planning; and
 3. Allowing the resident to back pay up to the date that the discharge or transfer is to be made and then may remain in the facility.
- K. A resident's change in payment status from private pay to Medicaid does not constitute non-payment of a facility stay.
- L. A discharge may not be initiated for nonpayment when:
1. A resident loses his or her Medicare or other insurance coverage unless that third party payment has stopped, the resident has been billed, and the resident has failed to make a timely payment; or
 2. If a resident has submitted appropriate paperwork to a third party payer and is waiting for a response to a claim.

Resources

State

§ 32.1-138.1 of the Code of Virginia
12VAC5-371-10 et seq.

Federal

42 CFR 483.12
State Operations Manual, Appendix PP