

## **§483.12 Admission, Transfer, and Discharge Rights**

### **§483.12(a) Transfer, and Discharge**

#### **(1) 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.**

#### **Guidelines §483.12**

This requirement applies to transfers or discharges that are initiated by the facility, not by the resident. Whether or not a resident agrees to the facility's decision, these requirements apply whenever a facility initiates the transfer or discharge. "Transfer" is moving the resident from the facility to another legally responsible institutional setting, while "discharge" is moving the resident to a non-institutional setting when the releasing facility ceases to be responsible for the resident's care. If a resident is living in an institution participating in both Medicare and Medicaid (SNF/NF) under separate provider agreements, a move from either the SNF or NF would constitute a transfer. Transfer and discharge provisions significantly restrict a facility's ability to transfer or discharge a resident once that resident has been admitted to the facility. The facility may not transfer or discharge the resident unless:

1. The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
2. 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;
3. The safety of individuals in the facility is endangered;
4. The health of individuals in the facility would otherwise be endangered;
5. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility;  
or
6. The facility ceases to operate.

To demonstrate that any of the events specified in 1 - 5 have occurred, the law requires documentation in the resident's clinical record. To demonstrate situations 1 and 2, the resident's physician must provide the documentation. In situation 4, the documentation must be provided by any physician. (See §483.12(a)(2).)

Moreover, before the transfer or discharge occurs, the law requires that the facility notify the resident and, if known, the family member, surrogate, or representative of the transfer and the reasons for the transfer, and record the reasons in the clinical record. The facility's notice must include an explanation of the right to appeal the transfer to the State as well as the name, address, and phone number of the State long-term care ombudsman. In the case of a developmentally disabled individual, the notice must include the name, address and phone number of the agency responsible for advocating for the developmentally disabled, and in the case of a mentally ill individual, the name, address and phone number of the agency responsible for advocating for mentally ill individuals. (See §483.12(a)(3) and (5).)

Generally, this notice must be provided at least 30 days prior to the transfer. Exceptions to the 30-day requirement apply when the transfer is effected because of:

- Endangerment to the health or safety of others in the facility;
- When a resident's health has improved to allow a more immediate transfer or discharge;
- When a resident's urgent medical needs require more immediate transfer; and
- When a resident has not resided in the facility for 30 days.

In these cases, the notice must be provided as soon as practicable before the discharge. (See §483.12(a)(4).)

Finally, the facility is required to provide sufficient preparation and orientation to residents to ensure safe and orderly discharge from the facility. (See §483.12(a)(6).)

Under Medicaid, a participating facility is also required to provide notice to its residents of the facility's bed-hold policies and readmission policies prior to transfer of a resident for hospitalization or therapeutic leave. Upon such transfer, the facility must provide written notice to the resident and an immediate family member, surrogate or representative of the duration of any bed-hold. With respect to readmission in a Medicaid participating facility, the facility must develop policies that permit residents eligible for Medicaid, who were transferred for hospitalization or therapeutic leave, and whose absence exceeds the bed-hold period as defined by the State plan, to return to the facility in the first available bed. (See §483.12(b).)

A resident cannot be transferred for non-payment if he or she has submitted to a third party payor all the paperwork necessary for the bill to be paid. Non-payment would occur if a third party payor, including Medicare or Medicaid, denies the claim and the resident refused to pay for his or her stay.

§483.10(o), Tag F177, addresses the right of residents to refuse certain transfers within an institution on the basis of payment status.

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## **F201**

### **§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.

SEE GUIDANCE UNDER TAG 202

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## **F202**

*(Rev. 127, Issued: 11-26-14, Effective: 11-26-14, Implementation: 11-26-14)*

### **§483.12(a)(3) Documentation**

When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by—

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

#### **Interpretive Guidelines: §483.12(a)(2) and (3)**

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.

*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.*

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## **F203**

*(Rev. 107, Issued: 04-04-14, Effective: 04-04-14, Implementation: 04-04-14)*

### **§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.**

**(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--**

**(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.**

**§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.**

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**F204**

**§483.12(a)(7) Orientation for Transfer or Discharge**

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

**Interpretive Guidelines §483.12(a)(7)**

“Sufficient preparation” means the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation. The facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence.

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**F205**

**§483.12(b) Notice of Bed-Hold Policy and Readmission**

**§483.12(b)(1) Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies--**

**(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the nursing facility; and**

**(ii) The nursing facility’s policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.**

**§483.12(b)(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.**

**Interpretive Guidelines §483.12(b)(1) and (2)**

The nursing facility’s bed-hold policies apply to all residents.

These sections require **two notices** related to the facility’s bed-hold policies to be issued. The first notice of bed-hold policies could be given well in advance of any transfer. However, reissuance of the first notice would be required if the bed-hold policy under the State plan or the facility’s policy were to change. The second notice, which specifies the duration of the bed-hold policy, must be issued at the time of transfer.

In cases of emergency transfer, notice “at the time of transfer” means that the family, surrogate, or representative are provided with written notification within 24 hours of the transfer. The requirement is met if the resident’s copy of the notice is sent with other papers accompanying the resident to the hospital.

Bed-hold for days of absence in excess of the State’s bed-hold limit are considered non-covered services which means that the resident could use his/her own income to pay for the bed-hold. However, if such a resident does not elect to pay to hold the bed, readmission rights to the next available bed are specified at §483.12(b)(3). Non-Medicaid residents may be requested to pay for all days of bed-hold.

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**F206**

(Rev. 70, 01-07-11, Effective: 10-01-10 Implementation: 10-01-10)

**§483.12(b)(3) Permitting Resident to Return to Facility**

A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident—

- (i) Requires the services provided by the facility; and
- (ii) Is eligible for Medicaid nursing facility services.

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**F207****§483.12(c) Equal Access to Quality Care**

§483.12(c)(1) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment;

§483.12(c)(2) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in §483.10(b)(5)(i) and (b)(6) describing the charges; and

§483.12(c)(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.