



November 28, 2017

Dear Administrator,

Based on questions received by the Office of the Ombudsman as well as a variety of notices received by the Office from some nursing homes, I wish to clarify the requirements of the Nursing Home Participation Rule/Notice to the Ombudsman of Involuntary Transfer or Discharge. I have copied directly a CMS Memorandum dated May 12, 2017, to State Survey Agency Directors from the Director of the Survey and Certification Group at the Centers for Medicare and Medicaid Services. The memorandum describes a number of rule implementation issues, including the circumstances under which nursing homes are required to send involuntary transfer or discharge notices to the Ombudsman. Essentially notices should be sent to the Ombudsman at the same time the notice is provided to the resident. **When a resident is transferred to an acute care setting, the home is required to send notice to the Ombudsman at the same time the home determines it will not readmit the resident and serves notice to the resident while still hospitalized.** However, homes are also required to send a list to the Ombudsman of all residents who are temporarily transferred to an acute care setting. But that list may be sent when practicable, such as on a monthly basis. Homes are **not** required to send Room Transfer notices to the Ombudsman.

A previous memo regarding Involuntary Discharge Notices was sent to you from the Office of the Ombudsman on April 5, 2017. I understand in recent months there is some discussion about suspending implementation and enforcement of Phases II and III of the final Requirements of Participation Rule. As the notice to the Ombudsman was implemented in Phase I-November 28, 2016, it is my understanding that this section of the rule will remain active no matter the outcome of implementation of Phases II and III.

Please send required notices by facsimile to the Office of the State Ombudsman, 860-424-4808. The notices will then be forwarded to the Regional Ombudsman assigned to that nursing facility. And the Regional Ombudsman will determine next steps to reach out to the resident and/or representative and advocate on his or her behalf.

I thank you for your attention to this requirement.

Nancy Shaffer, State Ombudsman



CMS Memorandum, May 12, 2017 (in part):

The regulation at 42 CFR 483.15(c)(3)(i) requires, in part, that before a facility transfers or discharges a resident, the facility must “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 also “...send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.” Sending a copy of the notice to a representative of the Office of the State Long-Term Care (LTC) Ombudsman provides added protection to residents and ensures the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges. Specific requirements for transfers and discharges are outlined below:

A. Facility-Initiated Transfers and Discharges

In situations where the facility has decided to discharge the resident while the resident is still hospitalized, the facility must send a notice of discharge to the resident and resident representative, and must also send a copy of the discharge notice to a representative of the Office of the State LTC Ombudsman. Notice to the Office of the State LTC Ombudsman must occur at the same time the notice of discharge is provided to the resident and resident representative, even though, at the time of initial emergency transfer, sending a copy of the **transfer** notice to the ombudsman only needed to occur as soon as practicable as described below.

For any other types of facility-initiated discharges, the facility must provide notice of discharge to the resident and resident representative along with a copy of the notice to the Office of the State LTC Ombudsman at least 30 days prior to the discharge or as soon as possible. The copy of the notice to the ombudsman must be sent at the same time notice is provided to the resident and resident representative.

Emergency Transfers

When a resident is temporarily transferred on an emergency basis to an acute care facility, notice of the transfer may be provided to the resident and resident representative as soon as practicable, according to 42 CFR 483.15(c)(4)(ii)(D). Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis.

B. Resident-Initiated Transfers and Discharges

A resident-initiated transfer or discharge means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility. The medical record must contain documentation or evidence of the resident’s or resident representative’s verbal or written notice of intent to leave the facility. A resident’s expression of a general desire or goal to return home or to the community or elopement of a resident who is cognitively impaired should not be taken as notice of intent to leave the facility. For resident-initiated transfers or discharges, sending a copy of the notice to the ombudsman is not required.

Additional information can be found at the CMS website: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html>