

**TO DISCHARGE OR NOT TO DISCHARGE:  
*WHAT NURSING FACILITY AND PERSONAL  
CARE HOME PROVIDERS NEED TO KNOW***

**PADONA'S 31<sup>ST</sup> ANNUAL CONVENTION  
April 4, 2019**

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# NURSING FACILITIES



## CMS INITIATIVE TO ADDRESS FACILITY INITIATED DISCHARGES THAT VIOLATE FEDERAL REGULATIONS (S & C 18-08-NH)

- Facility initiated discharges continue to be one of the most frequent complaints made to the State LTC Ombudsman.
- Discharges which violate federal regulations are of great concern because they can be unsafe and/or traumatic for residents/families.
- Most commonly reported reason for discharge is due to behavioral, mental and/or emotional expressions or indications of resident distress.
- CMS initiative to address improper facility initiated discharges.



## ADMISSION CONSIDERATIONS

- §483.15(a)(6) – A nursing facility must disclose and provide to a resident or potential resident prior to time of admission, notice of special characteristics or service limitations of the facility.
- Can the facility meet the necessary needs and provide the care and services required by a potential resident?



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES FOR LONG TERM CARE (“LTC”) FACILITIES

Relevant Definitions: Appendix PP of State Operations Manual

- 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. Specifically, transfer refers to the movement of a resident from a bed in one certified facility to a bed in another certified facility when the resident expects to return to the original facility. Discharge refers to the movement of a resident from a bed in one certified facility to a bed in another certified facility or other location in the community, when return to the original facility is not expected.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

Relevant Definitions Cont.: Appendix PP of State Operations Manual

- Facility-Initiated Transfer or Discharge – A transfer or discharge which the resident objects to, did not originate through a resident’s verbal or written request, and/or is not in alignment with the resident’s stated goals for care and preferences.
- 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 (leaving the facility does not include the general expression of a desire to return home or the elopement of residents with cognitive impairment).



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Regulatory Limitations on Transfers and Discharges (42 CFR §483.15(c)(1)(i))
  - The Facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:
    - A transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility.
    - 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.
    - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Regulatory Limitations on Transfers and Discharges (42 CFR §483.15(c)(1)(i)) Cont.
  - The Facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:
    - The health of individuals in the facility would otherwise be endangered.
    - 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.
    - The Facility ceases to operate.



## OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Appeal of Transfer or Discharge (42 CFR §483.15(c)(1)(ii))
  - The facility may not transfer or discharge the resident while the appeal is pending when a resident exercises his or her right to appeal a transfer or discharge notice from the facility 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.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Required Documentation (42 CFR §483.15(c)(2))
  - When the facility transfers or discharges a resident pursuant to 42 CFR §483.15(c)(1)(i), 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.
  - Documentation in the resident's medical record must include:
    - Basis for the transfer
    - In the case of a transfer or discharge pursuant to §483.15(c)(1)(i)(A), the specific resident need(s) that cannot be met, facility attempts to meet the resident need(s), and the service available at the receiving facility to meet the need(s).



## OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Required Documentation Cont. (42 CFR §483.15(c)(2))
  - The documentation in the resident's medical record must be made by:
    - The resident's physician when transfer or discharge is necessary under §483.15(c)(1)(A) or (B):
      - (A) Transfer or discharge is necessary for resident's welfare and resident's needs can't be met in facility;
      - (B) Transfer or discharge is appropriate because resident's health has improved and resident no longer needs services provided by facility.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- The documentation in the resident's medical record must be made by:
  - A physician when transfer or discharge is necessary under CFR §483.15(c)(1)(C) or (D):
    - (C) Safety of individuals in facility is endangered due to clinical or behavioral status.
    - (D) Health of individuals in facility would otherwise be endangered.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Required Documentation Cont. (42 CFR §483.15(c)(2))
  - Information provided to the receiving provider must include a minimum of the following:
    - Contact information of the practitioner responsible for the care of the resident
    - Resident representative information including contact information
    - Advance Directive information
    - All special instructions or precautions for ongoing care, as appropriate
    - Comprehensive care plan goals
    - All other necessary information, including a copy of the resident's discharge summary and any other documentation, as applicable, to ensure a safe and effective transition of care



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Notice Before Transfer (42 CFR §483.15(c)(3))
  - 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 send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.***
    - Record the reasons for the transfer or discharge in the resident's medical record.
    - Include in the notice the items described in 42 CFR §483.15(c)(5).



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Timing of Notice (42 CFR §483.15(c)(4))
  - Except as specified below and except as specified under §483.15(c)(8) (regarding facility closure), the notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged.
  - Notice must be made as soon as practicable before transfer or discharge when:
    - The safety of individuals in the facility would be endangered.
    - The health of individuals in the facility would be endangered.
    - The resident's health improves sufficiently to allow a more immediate transfer or discharge.
    - An immediate transfer or discharge is required by the resident's urgent medical needs.
    - A resident has not resided in the facility for 30 days.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Contents of Notice (42 CFR §483.15(c)(5))
  - A written notice of transfer or discharge must include the following:
    - The reason for transfer or discharge.
    - The effective date of transfer or discharge.
    - The location to which the resident is transferred or discharged.
    - 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.
    - The name, address (mailing and email) and telephone number of the Office of the State LTC Ombudsman.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Contents of Notice Cont. (42 CFR §483.15(c)(5))
  - A written notice of transfer or discharge must include the following:
    - 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.
    - 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.

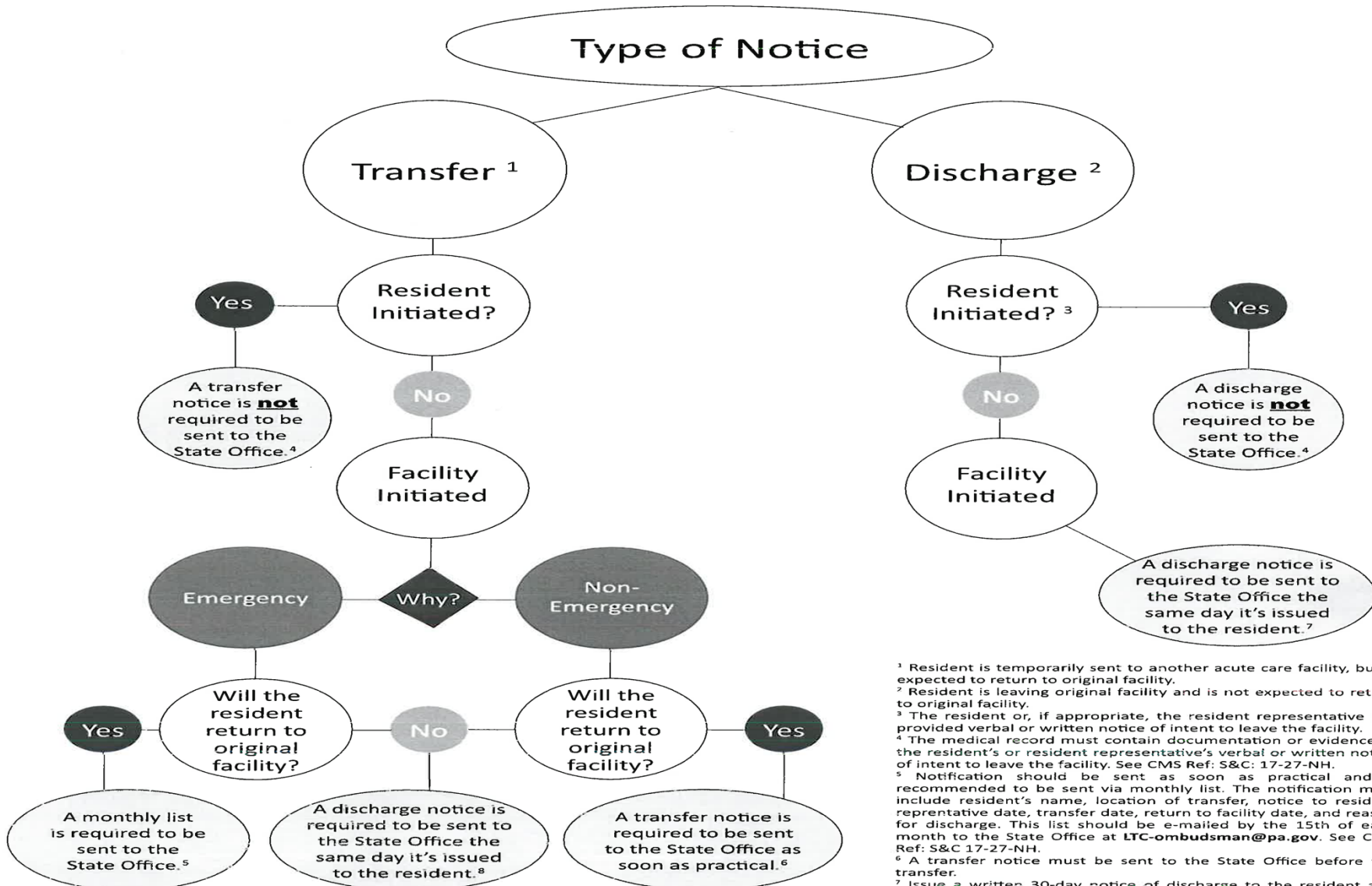


# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Changes to Notice (42 CFR §483.15(c)(6))
  - 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 possible once the updated information becomes available.
- Orientation for Transfer or Discharge (42 CFR §483.15(c)(7))
  - A facility must provide and document sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

# Involuntary Discharge and Transfer Notices

When and what to send to the PA Long-Term Care Ombudsman Office (State Office)



<sup>1</sup> Resident is temporarily sent to another acute care facility, but is expected to return to original facility.

<sup>2</sup> Resident is leaving original facility and is not expected to return to original facility.

<sup>3</sup> The resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility.

<sup>4</sup> 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. See CMS Ref: S&C: 17-27-NH.

<sup>5</sup> Notification should be sent as soon as practical and is recommended to be sent via monthly list. The notification must include resident's name, location of transfer, notice to resident representative date, transfer date, return to facility date, and reason for discharge. This list should be e-mailed by the 15th of each month to the State Office at [LTC-ombudsman@pa.gov](mailto:LTC-ombudsman@pa.gov). See CMS Ref: S&C 17-27-NH.

<sup>6</sup> A transfer notice must be sent to the State Office before the transfer.

<sup>7</sup> Issue a written 30-day notice of discharge to the resident and e-mail notice to [LTC-ombudsman@pa.gov](mailto:LTC-ombudsman@pa.gov) the same day it's issued to the resident. The State Office will distribute the notice to the appropriate local ombudsman.

<sup>8</sup> A discharge notice is required unless the discharge is now resident-initiated.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Notice of Bed-Hold Policy and Return (42 CFR §483.15(d))
  - Notice before transfer – Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies:
    - The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;
    - The reserve bed payment policy in the state plan, if any;
    - The nursing facility's policies regarding bed-hold periods, which must be consistent with §483.15(e)(1), permitting a resident to return; and
    - The information specified in §483.15(e)(1).



## OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Notice of Bed-Hold Policy and Return Cont. (42 CFR §483.15(d))
  - 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 the resident representative written notice which specifies the duration of the bed-hold policy.



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Permitting Residents to Return to Facility (42 CFR §483.15(e)(1))
  - A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following:
    - A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semi-private room if the resident:
      - requires the services provided by the facility; and
      - is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.
    - If the facility that determines that a resident who was transferred with an expectation of returning to the facility, cannot return to the facility, the facility must comply with the discharge requirements under §483.15(c).



# OVERVIEW OF REGULATORY PROVISIONS GOVERNING LTC TRANSFERS AND DISCHARGES

- Discharge Summary (42 CFR §483.21(c)(2))
  - When the facility anticipates discharge, a resident must have a discharge summary that includes, but is not limited to, the following:
    - A recapitalization of the resident's stay that includes, but is not limited to, diagnoses, course of illness/treatment or therapy, and pertinent lab, radiology and consultation results.
    - A final summary of the resident's status to include items under §483.20(b)(1), at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or resident's representative.
    - Reconciliation of all pre-discharge medication with the resident's post-discharge medications (both prescribed and over-the-counter).
    - A post-discharge plan of care that is developed with the participation of the resident and, with the resident's consent, the resident representative(s), which will assist the resident to adjust to his/her new living environment. The post-discharge plan of care must indicate where the individual plans to reside, any arrangements that have been made for the resident's follow-up care and any post-discharge medical and non-medical services.



# RISK MANAGEMENT ISSUES/CONSIDERATIONS

- Disruptive residents
  - Dangerous behaviors
  - Steps to ensure health/safety of other residents/staff
- Difficult family members
  - POA directing care which is adverse to resident
  - Family member verbally abusive/confrontational with staff
  - Can provider restrict family member's access to facility?
- Nonpayment
  - Misappropriation of resident funds
- Potential Liability Issues

# PERSONAL CARE HOMES



# OVERVIEW OF PERSONAL CARE HOME REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES

- Resident Right (55 Pa. Code §2600.42(u))
  - A resident has the right to remain in the home, as long as it is operating with a license, except as specified in §2600.228 (relating to notification of termination).



# OVERVIEW OF PERSONAL CARE HOME REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES

- Grounds for Transfer or Discharge (55 Pa. Code §2600.228(h))
  - The only grounds for discharge or transfer of a resident from a personal care home are for the following conditions:
    1. The resident is a danger to himself/herself or others.
    2. The legal entity chooses to voluntarily close the home, or a portion of the home.



# OVERVIEW OF PERSONAL CARE HOME REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES

- Grounds for Transfer or Discharge Cont. (55 Pa. Code §2600.228(h))
  3. The home determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the home. If a resident or the resident's designated person disagrees with the home's decision to discharge or transfer, consultation with an appropriate assessment agency or the resident's physician shall be made to determine if the resident needs a higher level of care. A plan for other placement shall be made as soon as possible by the administrator in conjunction with the resident and the resident's designated person, if any. If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental retardation program or drug and alcohol program, for assistance. The administrator shall also contact the Department of Human Services' personal care home regional office.



# OVERVIEW OF PERSONAL CARE HOME REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES

- Grounds for Transfer or Discharge Cont. (55 Pa. Code §2600.228(h))
  4. Meeting the resident's needs would require a fundamental alteration in the homes' program or building site, or would create an undue financial or programmatic burden on the home.
  5. The resident has failed to pay after reasonable documented efforts by the home to obtain payment.
  6. Closure of the home is initiated by DHS.
  7. Documented, repeated violation of the home rules.



# OVERVIEW OF PERSONAL CARE HOME REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES

- Timing of Notice of Transfer/Discharge (55 Pa. Code §2600.228(b))
  - If the home initiates a discharge or transfer, or if the legal entity chooses to close the home, the home shall provide a 30 day advance written notice to the resident, the resident's designated person and the referral agent citing the reasons for the discharge or transfer.
  - A 30 day advance notice is not required if a delay in discharge or transfer would jeopardize the health, safety or well-being of the resident or others in the home, as certified by a physician or DHS.



# OVERVIEW OF PERSONAL CARE HOME REGULATORY PROVISIONS GOVERNING TRANSFERS AND DISCHARGES

- Documentation (55 Pa. Code §2600.228(e))
  - The date and reason for the discharge or transfer, and the destination of the resident, if known, shall be recorded in the resident record.
- Relocation Assistance (55 Pa. Code §2600.228(a))
  - At the resident's request, the home shall provide assistance in relocating to the resident's own home or to another residence that meets the needs of the resident.



# RISK MANAGEMENT ISSUES/CONSIDERATIONS

- Disruptive Residents
  - Dangerous behaviors
  - Steps to ensure health/safety of other residents/staff
- Difficult Family Members
  - Family member verbally abusive/confrontational with staff
  - POA directing care which is adverse to resident
  - Can provider restrict family member's access to facility?
- Nonpayment
- Violation of Home Rules
  - Documentation
  - What constitutes a "repeat" violation?
  - Prohibiting the use of alcohol
- Potential Liability Issues



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