

Notice Requirements for Transfer/Discharge of a Long-Term Care Resident

I. Content

Allowable Reason

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility pursuant to 42 C.F.R. § 483.15 (a)(6);
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 due to the clinical or behavioral status of the resident;
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 (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment 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
6. The facility closes.

Please note: A facility may not transfer or discharge a resident while an 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 also be sure to document the danger that failure to transfer or discharge would pose. 42 C.F.R. § 483.15(c)(1).

All transfer and discharge notices must specifically cite one of the six above reasons. Other justifications, such as behavioral problems or failure to follow facility policies, are not reasons under federal law.

In addition, when the facility transfers or discharges a resident under any circumstances, 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. 42 C.F.R. § 483.15(c)(2).

Date

The notice must include the effective date when the transfer/discharge is to be carried out and must be issued at least 30 days prior to that date. When the facility is closing, the notice must be issued at least 60 days prior to the proposed transfer/discharge date. Notice to the resident or the resident's representative is still required in emergent circumstances.

Destination of Resident

The notice must identify the location to which the resident will be transferred or discharged. This too, must be specific. Vague language such as "to other facility" or "home" is not sufficient.

Appeals Information

Residents, regardless of payor source, have the right under federal law to appeal transfer/discharge notices to the State Medicaid agency. You must include contact information for the Fair Hearing Unit of the State Medicaid agency for this purpose.

Division of Medical Assistance and Health Services
Fair Hearing Unit
P.O. Box 712
Trenton, NJ 08625
(609) 588-2655

Please note: Notices should never list the LTCO as an appeals agency. The LTCO has no involvement in facility decisions to involuntarily remove residents, nor does the LTCO have a process for resident appeals. Again, the LTCO contact information should be provided for resident advocacy purposes only.

Contact Information for the LTCO and Other Advocacy Organizations

The notice must include the name, telephone number and address of the LTCO.

Office of the Long-Term Care Ombudsman
P.O. Box 852
Trenton, NJ 08625-0852
(877) 582-6995
Fax: (609) 943-3479
ombudsman@LTCO.nj.gov

The LTCO should at all times be represented as an advocacy organization that exists to assist residents. Thus, any language suggesting that the LTCO is involved in the facility's decision to transfer/discharge a resident or will investigate residents or their families on behalf of facilities is improper. For example, "We are also sending this notice to LTCO for their investigative purposes," is inappropriate.

If the resident has an intellectual or developmental disability or a mental illness, the notice must also include the mailing and email address and telephone number of the agency responsible for protection and advocacy under federal law. In New Jersey this agency is:

Disability Rights New Jersey
210 South Broad Street, 3rd Floor
Trenton, New Jersey 08608
(609) 292-9742 or (800) 922-7233 in NJ Only
(609) 777-0187 (Fax)
(609) 633-7106 (TTY)
advocate@drnj.org

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.

II. Delivery of Notice

The notice of the transfer/discharge must be given to the resident or the resident's representative(s). The notice must contain the reasons for the move in writing and in a language and manner they understand. *Again, a copy of*

the notice must be sent to the LTCO when the transfer/discharge is initiated by the facility. Copies can also be faxed to the LTCO at 609-943-3479 or emailed to ombudsperson@LTCO.nj.gov.

There are times when facility staff do not want to “upset” the resident and gives the notice only to the resident’s family. This is not legally sufficient and, more importantly, does not alert the very person whose rights are impacted by the proposed transfer or discharge.

III. Medicaid and Medicaid-Pending Residents

If the resident is receiving Medicaid, you must first contact your local Office of Community Choice Options (OCCO) for permission to relocate him or her. The New Jersey Department of Health’s regulations outlining that procedure can be found at N.J.A.C. 8:85-1.10. If OCCO grants its permission to transfer the resident, only then can you issue a 30-day notice to relocate the resident to another appropriate placement.

IV. Allegations of Financial Exploitation

You may sometimes seek to transfer or discharge a resident because the resident or his/her legal representative is not paying the bill and you believe something suspect may be happening with the resident’s income or funds. If you suspect the resident has been or is being exploited, you are required by state law to report it independently to the LTCO - as a “mandatory report.” N.J.S.A. 52:27G-7.1(a). The sole fact that you are not receiving payment does not meet the LTCO’s definition of exploitation. See N.J.S.A. 52:27G-2(e).

Summary of Notice Requirements

To summarize, the notice requirements for transfer/discharge of a resident from a nursing facility must contain:

- The reason for transfer or discharge;
- The effective date;
- The location to which the resident is transferred or discharged;
- A statement of the resident’s appeal rights, including contact information for the appeal agency, information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
- Contact information for the NJ LTCO or Disability Rights NJ and appeals information for the Division of Medical Assistance and Health Services Fair Hearing Unit. (See above.)