NEWS & VIEWS

A Complimentary Newsletter from Med-Net Concepts, LLC
and its Network of Independent Affiliated Companies

Volume 4. Issue 12
December 2018

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Med-Net Concepts, LLC

"Med-Net Compliance's Fraud Avoidance Courses Are A Good First Line Of Defense"

Jo Ann Halberstadter, Esq

ADMINISTRATORS TAKE NOTE

Med-Net Compliance, LLC now offers two series of fraud modules with NAB/NCERS CEs on our website. Modules 1-8 offers 3 NAB CEs and modules 9-16 offer 3.75 CEs. All modules provide education on fraud, waste and abuse prevention and offer a combined total of 6.75 CEs for successful completion.

To review the NAB Accredited courses visit our website:
https://www.mednetcompliance.com/med-net-academy/nab-accredited-courses/

All 16 courses on fraud, waste and abuse were developed by Betty Frandsen, our Director of Healthcare Education Development and her staff.

Nursing Home Involuntary Transfers and Discharges: What Is and Is Not Acceptable

By:
Louise Lindsey, Editor

In November 2018, the Office of Inspector General (OIG) added a new item to its 2019 Work Plan-Involuntary Transfer and Discharge in Nursing Homes. The addition of this new item stems from concerns and data from the National Ombudsman Reporting System that the most frequently cited complaints during the period from 2011 through 2016 involved "discharge and/or eviction."

The involuntary transfer or discharge of a nursing home resident has been recognized for many years as being a potentially unsafe and traumatic experience for both the resident and his or her family. The rise in concern can also be seen in the increased number of media articles and reports about what is described as nursing home "dumping." The following is an example of what is being reported in the media:

The State of Maryland's attorney general recently sued the parent company of five nursing homes "claiming it engaged in unfair, unsafe, and unlawful discharge practices-evicting hundreds of residents who were unable to pay for their care from its five nursing homes across the state."

One of those residents reportedly was "dumped" when her health insurance coverage ran out. The nursing home allegedly took her to Baltimore, placed her in an unlicensed assisted living facility, and that facility later literally "dumped" her on a downtown Baltimore street. The woman had experienced a stroke along with a tracheotomy operation that made her unable to talk; however, she has since been able to share the experience vividly through writing it down.

The parent company operating the five nursing homes agreed to pay $2.2 million and has been banned from operating in the state.

Nursing home dumping is considered a form of elder abuse. It happens when a long-term post-acute care (LTPAC) center performs an act like leaving a resident at an emergency room or evicting them without any warning. Afterward, the nursing home tells the resident and his or her family that they can't be re-admitted because it doesn't have any beds available-even though a nursing home is supposed to hold a bed available for a 7-day period in these circumstances. There are federal and state regulations that detail the proper procedure for discharging a resident. This procedure includes a 30-day warning, and specific, detailed documentation, but frequently, the "dumped" resident and his or her family are unaware of these laws and the rights a resident has to a proper discharge. This creates a feeling of panic and hopelessness.

Often family members will try to contact the nursing home to find out why the discharge occurred and their enquiries may be met with a series of road-blocks and detours. The nursing home may claim that providing any information would violate the Health Insurance Portability and Accountability Act (HIPAA) guidelines.

LTPACs Propose Faulty Excuses for Making Involuntary Transfers and Discharges

To rationalize or cover-up their real reasons behind involuntarily transferring and discharging residents, LTPACs will offer excuses like these-

- Low nursing staff level makes it impossible to care for residents with challenging behaviors or issues.
- The resident's savings are running out or his or her income is too low.
- The facility wants to limit how many residents are on Medicare and Medicaid because the facility does not get reimbursed sufficiently for the care they provide.
- The resident has behavioral issues, high-cost or care-intensive health conditions, or difficult and demanding family members.
- The resident has dementia and displays dementia-related aggression.
- The resident has no family and is a ward of the state.

None of these excuses make it acceptable to disregard a resident's rights and to ignore the government-required process involved in all types of transfers and discharges, but especially regarding involuntary transfers and discharges.

The Rights of Residents Regarding Transfer and Discharge

The State Operations Manual's Appendix PP- Guidance to Surveyors for Long-Term Care Facilities (pages 167-179), provides the guidelines for legitimate transfer and discharge of residents under CR §483.15(c) Transfer and Discharge.

Under these guidelines a nursing home must allow a resident to stay in the facility, and a resident may only be transferred or discharged for the following reasons:

- The resident's welfare and needs cannot be met in the facility;
- The resident's health has improved and he or she no longer needs to be cared for in the facility;
- The resident's clinical behavior poses a danger to the safety of others in the facility;
- The health of others in the facility is endangered;
- The resident has been given reasonable and appropriate notice that he or she must pay or have Medicare or Medicaid pay in order to remain in the facility. Non-payment may apply if the resident does not submit the proper paperwork to a third party (including Medicare and Medicaid), or the resident's claim is denied and the resident refuses to pay. The facility may only charge a resident who has become eligible for Medicaid the charges allowable under Medicaid.

- The facility closes and is no longer operational.

A resident has a right to appeal a transfer or discharge notice from the facility, and while the appeal is pending, the resident may not be transferred or discharged.

When a facility transfers or discharges a resident based on any of the above described reasons, the resident's medical record must be documented appropriately and communicated to the healthcare provider receiving the resident. Documentation in the resident's medical record must include the following:

- Basis for the transfer;
- Specific needs that the facility cannot meet, the facility's attempts to meet those needs, and the capability of the facility receiving the resident to meet those needs;
- The documentation for certain required provisions is made by the resident's physician or another physician;
- The receiving provider must receive at a minimum the following information:
    - Contact information of the resident's physician,
    - Contact information for the resident's representative,
    - Advance Directive information,
    - All special instructions or precautions for ongoing care,
    - Comprehensive care plan goals,
    - All other necessary information and applicable documentation: including a copy of the resident's discharge summary.

Before implementing valid Involuntary Transfers and Discharges, a LTPAC must provide notice to the resident or to the resident's representative at least 30-days before the transfer or discharge occurs. This notice must be in writing and include the reasons for the transfer and discharge, and it must be written in a language and at a level that the resident or the representative can understand. A copy of the notice must be sent to the Office of the State Long-Term Care Ombudsman.

It should be noted that these guidelines do not apply to resident-initiated transfers and discharges.

Great care and concern are needed to ensure that an involuntary transfer and discharge of a resident causes a minimum of discomfort and stress for the resident. The details in this article are intended to raise awareness and are not a substitute for seeking the counsel of persons well-versed in the regulations and guidelines governing this topic.

Med-Net Concepts, LLC Affiliates

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