



NEWS & VIEWS

A Complimentary Newsletter from Med-Net Concepts, LLC

A Network of Healthcare Compliance & Consulting Companies

The HHS Office of Inspector General (OIG) 2021 Work Plan Announced: Nursing Home Discharges To Be Examined

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The HHS Office of Inspector General (OIG) announced it is planning in 2021 to examine the extent to which nursing homes meet the Centers for Medicare & Medicaid Services (CMS) requirements for facility-initiated discharges. The OIG is concerned that facility-initiated transfers or discharges of residents can be an unsafe and traumatic experience for the resident and family. In response to this concern, Congress passed the Nursing Home Reform Act of 1987 to protect residents against inappropriate facility-initiated transfers and discharges. Nevertheless, in spite of Congressional action, the National Ombudsman Reporting System shows more cited complaints from 2011 through 2016 than any other concern. The OIG conducted a study and found numerous reasons for noncompliant discharges, including changes to payment source. The most frequently reported discharge reason was due to behavioral, mental, and/or emotional expressions or indications of resident distress. The most common discharge violations included placement in a questionable/unsafe setting; a resident remains hospitalized; and a pattern of discharge violations in the facility.

CMS F-Tag 622 Involuntary Transfer and Discharge states that the facility must permit each resident to remain in the facility and not transfer or discharge the resident unless—

- The transfer/discharge is for the resident's welfare, and the resident's needs cannot be met in the facility
- The transfer/discharge is appropriate because the resident's health has improved, so he or she no longer needs the facility's services
- The safety of others in the facility is endangered by the resident's clinical or behavioral status
- 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)
- The facility ceases to operate

When transferring or discharging a resident under any of these listed circumstances, the facility must ensure the transfer or discharge is documented in the resident's medical record, including the basis for the transfer, a specific resident need or needs that cannot be met, facility attempts to meet the resident's needs, the service available at the receiving facility to meet those needs, and must communicate appropriate information to the receiving healthcare institution or provider.

Required documentation that must be made by the resident's physician when transfer or discharge is necessary includes a statement of why the resident's needs cannot be met at the facility, OR that the resident no longer needs facility services, OR that the resident presents a danger to self or others. The medical record should contain documentation/evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility, a discharge care plan, and documented discussions with the resident or, if appropriate, his/her representative, containing details of discharge planning and arrangements for post-discharge care.

A discharging facility must at a minimum provide the following information to the receiving provider:

- 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
- Comprehensive care plan goals
- All other necessary information, including the resident's discharge summary and any other documentation to ensure a safe and effective transition of care

Residents who are sent emergently to the hospital are considered facility-initiated transfers because the resident's return is generally expected. Residents who are sent to the emergency room must be permitted to return to the facility unless the resident meets one of the criteria under which the facility can initiate discharge.

The resident has the right to appeal his or her discharge, and the facility may not discharge the resident while that appeal is pending. If a resident's initial Medicaid application is denied but appealed, the resident is not considered to be in nonpayment status. Thus, an appeal suspends a finding of nonpayment. Appeal procedures vary by state. If the resident or their representative appeals the discharge while in a hospital, the facility must allow the resident to return pending their appeal, unless there is evidence that the facility cannot meet the resident's needs, or the resident's return would pose a danger to the health or safety of the resident or others in the facility. A facility's determination to not permit a resident to return while an appeal of the resident's discharge is pending must not be based on the resident's condition when originally transferred to the hospital.

According to CMS F623 Notice Before Transfer, the facility must notify the resident and/or 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. A copy of the notice must be provided to a representative of the Office of the State Long-Term Care Ombudsman. The notice of transfer or discharge required under this section must be made by the facility at least thirty (30) days before the resident is transferred or discharged unless circumstances require, and documentation shows, the need for a more rapid discharge. In that case, 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 thirty (30) days

The written discharge notice must include the reason for transfer or discharge, the effective date of the transfer or discharge, and the location to which the resident is being transferred or discharged. A statement of the resident's appeal rights must be provided that includes the name, address (mailing and email), and telephone number of the entity that receives such requests; information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request; and the name, address (mailing and email), and telephone number of the Office of the State Long-Term Care Ombudsman. For residents with intellectual and developmental disabilities or related disabilities, the notice must include the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with

developmental disabilities. For residents with a mental disorder or related disabilities, include 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.

Sufficient preparation and orientation must be provided to the resident by the facility, such as explanation that informs the resident where he or she is going. The facility must document steps taken to minimize the resident's anxiety. Documentation of this orientation must be recorded in the medical record, including the resident's understanding of the transfer or discharge.

The OIG work plan announcement means that in 2021 it will further examine the extent to which nursing homes adhere to these detailed CMS requirements of participation with respect to facility initiated resident transfers and discharges.

NAB/NCERS Approved Webinar On Creating a Culture of Diversity Now Available

Our newest on-demand program titled, "Creating a Culture of Diversity: Removing Bias and Discrimination from the Workplace" will review the potential impact of unconscious bias in the workplace by discussing current issues and providing examples of what to say and what not to say and discussing ways to ensure that all people – staff, residents, and visitors alike – feel valued and safe in your facility.

For information on ordering this new series on Data Security click on the link below that will take you to the Med-Net Concepts Store.

<https://mednetcompliance.com/store/product/nab-ncers-approved-webinars-creating-a-culture-of-diversity/>

NAB/NCERS Approved Series On Data Security Now Available

This Data Security Program for Long-Term and Post-Acute Healthcare Professionals presents core knowledge for leaders in the field of long-term care management with regard to data security requirements. The information in the six modules in the series provides foundational and advanced information that enables leaders to establish data security programs by knowing what is required of them, their data security officer, their facility, and their staff. Upon completion of the program, learners will be able to demonstrate their proficiency, knowledge, and skill in the area of data security and program oversight for both resident and staff private information.

For information on ordering this new series on Data Security click on the link below that will take you to the Med-Net Concepts Store.

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