John

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January 25, 1996

CORRECTED COPY

Correction on page 4 of attachment

INFORMATIONAL LETTER #96-1

DATE: January 3, 1996

TO: SKILLED NURSING FACILITIES

FROM: JOHN W. HATHAWAY, Chief
Bureau of Facility Standards

SUBJECT: THIRTY-DAY NOTICE REQUEST FOR FAIR HEARING

Enclosed is a copy of the procedure for the thirty-day notice in a request for a fair hearing that was previously mailed to you. The address on page 4 of the attachment **has changed**, hence the corrected copy.

If you have any questions, please contact Loretta Todd, R.N., Supervisor of our Long Term Care Unit at (208) 334-6626.

John W. Hathaway

JOHN W. HATHAWAY, Chief
Bureau of Facility Standards

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Enclosure
cc: Idaho Health Care Association
Loretta Todd, R.N., Supervisor--Long Term Care Unit

Printed on recycled paper.

CORRECTED COPY

INVOLUNTARY TRANSFER/DISCHARGE PROCEDURES
Long Term Care Facilities

From time to time facilities determine that a resident must be discharged. The federal regulations outline specific instructions on when and how this may be accomplished. These guidelines can be found in 42 CFR 483.12(a)(2) through (7), F201 through F204.

Reasons for discharge:

Acceptable reasons for a facility to require a resident to leave are outlined at F201, which states:

"(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from facility unless--

"(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

"(ii) 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;

"(iii) The safety of individuals in the facility is endangered;

"(iv) The health of individuals in the facility would otherwise be endangered;

"(v) 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. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident only allowable charges under Medicaid;"

Examples of residents who might meet these criteria would be (taken from F201):

(i) Resident has Alzheimer's and wanders outside constantly. The facility has no Alzheimer's unit.

(ii) Resident is medically stable and could transfer to residential care.

(iii) Two examples:
- A mentally competent resident has a pattern of physically abusing another resident in the facility. In spite of appropriate counseling or other interventions, the behavior has not stopped.
- A resident who smokes, persists in smoking in his room

(iv) A mentally competent resident develops a draining wound. The resident refuses dressings or treatment to the wound. The resident insists on ambulating freely in the halls. Other residents are exposed to the infectious drainage.

(v) A resident who is private pay promises to pay the bill but does not.

The Guidance to Surveyors specifically mentions two situations that would not meet the criteria for discharge. These are:

1. Refusal of treatment, unless the facility is unable to meet the needs of the resident or protect the health and safety of others.

2. Conversion from a private pay rate to payment at the Medicaid rate.

Documentation:

The decision to involuntarily discharge a resident must be the choice of last resort The resident's record must document the facility's efforts to resolve the situation before the decision for transfer is made. Involvement of the ombudsman in problems of this magnitude is strongly encouraged.

F202 states the following:

"(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section [listed above], the resident's clinical record must be documented. The documentation must be made by--

"(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

"(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section."

In other words, if the resident is being transferred because his needs cannot be met or because his condition has improved and long term care is no longer needed, **the resident's attending physician** must document these facts in the resident's record. If the resident is being transferred because the health of other individuals in the facility is endangered, then **any** physician can document these facts in the resident's record. If the resident is being transferred for non-payment or because the safety of other individuals is endangered, there is no requirement for physician documentation of these facts in the resident's record.

Notice Before Discharge:

Before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move **in writing** and in a language and manner they can understand (F203).

Timing of the Notice:

The written notice must be made by the facility at least **30 days** before the resident is transferred or discharged **except** in the following circumstances, when the notice may be made as soon as practicable before transfer or discharge:

1. The health or safety of individuals in the facility are endangered.
2. The resident's health improves sufficiently to allow a more immediate transfer or discharge.
3. An immediate transfer or discharge is required by the resident's urgent medical needs.
4. The resident has not resided in the facility for 30 days.

This information is all found at F203.

Contents of the Notice:

The written notice of discharge must contain the following (also taken from F203):

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address, and telephone number of the State long term care ombudsman;

(vi) and (vii)
For residents with developmental disabilities or mental illness, the name, address, and telephone number of the agency responsible for the protection and advocacy of those individuals.

If the written notice does not contain all the above required information, the notice is void and must be started over.

The regulations additionally require that the facility take reasonable actions to ensure an orderly and safe transfer. F204 states the following:

> "(7) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility."

Appeal Procedures:

As stated above, the resident has a right to appeal to the State the facility's decision to transfer or discharge. Requests for appeal should be received before the 30 days have passed in order to stop the discharge/transfer before it occurs. It it generally the ombudsman that assists the resident or their representative with the appeal process. Social service staff should also be familiar with the process.

Requests for appeal should be sent to:

OFFICE OF THE ATTORNEY GENERAL
FAIR HEARINGS OFFICE
1790 NORTH WESTGATE DRIVE
BOISE IDAHO 83704
FAX NUMBER (208) 334-0981

If the request for appeal comes to the Bureau of Facility Standards, it will immediately be forwarded to Administrative Procedures.

Administrative Procedures will contact the facility and the resident or their representative to set up a time, date, and place for the hearing. In most cases, the hearing officer will request that the facility retain the resident until the hearing can be completed. Facility Standards will be notified of the time and date of the hearing. Staff from Facility Standards may attend the hearing, as work schedules allow. From this point, the procedure no longer involves Facility Standards.