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INFORMATIONAL LETTER #2014-02

DATE: May 21, 2014

TO: ALL LONG TERM CARE FACILITIES IN IDAHO

FROM: DEBBY RANSOM, R.N., R.H.I.T., Chief
Bureau of Facility Standards

SUBJECT: **Thirty-Day Notice of Discharge and Request for Fair Hearing**

Attached is an updated copy of the procedure for the thirty-day notice of discharge and a request for a fair hearing. This Informational Letter replaces Informational Letter #96-1.

If you have any questions, please contact Lorene Kayser, LWS, QIDP, or David Scott, RN, Co-Supervisors of the Long Term Care unit at 208 / 334-6626, option 2.

DEBBY RANSOM, R.N., R.H.I.T., Chief
Bureau of Facility Standards

DR/nm

c: Idaho Health Care Association

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:

483.12(a)(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:

- (i) A resident who is medically stable and could transfer to the community or a lower level of care.
- (ii) 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.

- (iii) A resident, who smokes, persists in smoking in the facility.
- (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. They 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 a payment at the Medicaid rate.

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.

The Interpretive Guidelines further state, "If transfer is due to a significant change in the resident's condition, but not an emergency requiring an immediate transfer, then prior to any action, the facility must conduct the appropriate assessment to determine if a new care plan would allow the facility to meet the resident's needs."

F202 states the following:

483.12(a)(3) Documentation

When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2) 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, it can be documented by anyone the facility chooses.

F203

483.12(a)(4) Notice Before Transfer

Before a facility transfers or discharges a resident, the facility must:

- (i) 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 understand.

483.12(a)(5) 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:

- (A) and (B) The safety and/or health of individuals in the facility are endangered.
- (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge.
- (D) An immediate transfer or discharge is required by the resident's urgent medical needs.
- (E) The resident has not resided in the facility for 30 days.

483.12(a)(6) Contents of the Notice

The written notice of discharge must contain the following:

- (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;

Cathy Hart
State Long Term Care Ombudsman
341 West Washington
Boise, Idaho 83702
Phone: (208) 334-3833
or 1-800-926-2588

- (vi) and (vii) For facilities certified for Medicaid:

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.

DisAbility Rights Idaho
4477 Emerald Street, Suite B-100
Boise, Idaho 83706-2066
208-336-5353
208-336-5396 (fax)
800-632-5125 (toll-free)

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:

483.12(a)(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 is generally the ombudsman that assists the resident or his/her representative with the appeal process. Social service staff should also be familiar with the process.

Requests for appeal should be sent to:

Department of Health and Welfare
Fair Hearings Office
PO Box 83720
Boise, Idaho 83720
Fax: 208-639-5741
E-mail: APS@dhw.idaho.gov

Please do not send a request for appeal to Facility Standards as this may cause a substantial delay in processing.