

**Illinois Long-Term Care Ombudsman Program**  
**Involuntary Transfer or Discharge Toolkit**

November 2010

**Trainer's Guide**

**Developed and Sponsored by:**

**West Central Illinois Area Agency on Aging**

**&**

**The Illinois Department on Aging**

**Written by: Jamie Freschi, Regional Ombudsman**

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# A Note to Trainers

*This toolkit/training is designed to be used by new and experienced Ombudsmen who would like additional guidance, resources, and tools to aid in their advocacy on behalf of residents. The training materials can be delivered in a classroom setting or as a webinar. Developed along with the trainer's guide are a participant's guide and a Power Point presentation. The webinar is set up so the participants will be viewing the participant's guide. If you are using a webinar, please send the participant's guide electronically before the training and ask participants to copy the Appendices for use during the webinar.*

*There are opportunities within the training for trainers to share personal cases or examples with the participants. Any additional information provided by the trainer will only enhance the training for the participants. Please provide local contact information for resources when applicable.*

*Trainer's notes appear throughout the trainer's guide. The trainer's notes are written in italics and are not in the participant's guide. Anything written in italics is only in the trainer's guide except for the italics that appear in the Involuntary Discharge Checklist on pages 19-31 of the trainer's guide and pages 15-27 in the participant's guide.*

# Part 1 - Introduction

## Welcome and Introductions

*Welcome the participants to the training. If the training is in a classroom setting, then allow time for everyone to introduce themselves. If the training is a webinar, make sure everyone announces themselves as they enter the webinar. A good question to ask everyone is what they hope to gain from the training. This gives the trainer a good idea of the participants' level of expertise and expectations of the training.*

## About the Toolkit

The purpose of the Involuntary Transfer or Discharge Toolkit is to offer Ombudsmen information and guidance for assisting residents when a facility is threatening to issue a notice of involuntary transfer/discharge or after a notice of involuntary transfer/discharge has been issued. The toolkit contains information on state and federal regulations and federal laws and also offers Ombudsmen suggestions about what to do in discharge situations. The focus of this manual is Skilled and Intermediate Care Nursing Homes. However, also included in the Appendices are: Title 77 IL State Regulations Administrative Codes for transfer and discharge for Assisted Living facilities, Intermediate Care Facilities for the Developmentally Disabled, and IL Veteran's Homes. As in all cases, when in doubt, please consult with your Regional Ombudsman for guidance and direction.

## Materials

*Trainer's note: All participants should receive a participant's guide in paper or electronic form. Additional materials are found in the Appendices.*

See the list of additional materials in the Appendices list on page 3.

## Learning Objectives

- Gain insight into the prevention of involuntary transfers or discharges;
- Improve communication with facility staff;
- Enhance knowledge of federal and state regulations;
- Understand the involuntary transfer or discharge process;
- Gain effective advocacy tools for working with challenging cases.

# Agenda

## **Part 1 – Introduction (15 min.)**

- Welcome & Introductions
- About the Toolkit
- Learning Objectives

## **Part 2 – Transfer or Discharge Prevention (30 min.)**

- Four actions to prevent transfer or discharge
- Sample Letter to Administrators
- Improper Discharges

## **Part 3 – IDPH Regulations (1 hr.)**

- Notice Before Transfer
- Bed Hold
- Appeal Process
- Pre-Hearing
- Hearing

## **Part 4 – Ombudsman Protocol (45 min.)**

- Ombudsman Checklist

## **Part 5 – Challenging Situations (45 min.)**

- Under 60 Residents
- Incapacitated Residents with no Representative
- Residents with Mental Illnesses
- Residents with “Behaviors”
- Emergency Transfers or Discharges
- Financial Exploitation

## **Part 6 – Case Studies (20 min.)**

- Mrs. Jones
- Mr. Smith

## **Part 7 – Tips and Closing Remarks (10 min.)**

# Part 2 - Transfer or Discharge Prevention

Definitions: According to 42 C.F.R. 483.12(a)(1) “transfer” is moving the resident from the facility to another legally responsible institutional setting, while “discharge” is moving the resident to a non-institutional setting when the releasing facility ceases to be responsible for the resident’s care.”

## Four actions to prevent transfer or discharge

There are four significant actions that Ombudsmen can take in order to prevent involuntary transfers or discharges. Everyone involved benefits when the problem can be resolved before the resident receives a notice.

### 1. **Maintain a regular presence in facilities.**

*As all Ombudsmen are aware, maintaining a regular presence in the facility is crucial in many aspects. With regular visits, residents are more likely to develop trust with an Ombudsman and staff members are more likely to understand the Ombudsman’s role as an advocate. Regular visits can offer an opportunity for the Ombudsman to be proactive in resolving concerns before the concerns lead to a discharge.*

### 2. **Maintain open communication with the administrator and other key staff members.**

*Maintaining open communication with the administrator or another significant staff member can be important in preventing an involuntary transfer or discharge notice from being issued.*

When entering a facility an Ombudsman should periodically ask the following questions:

- a. Are there any residents who may need to speak to an Ombudsman?
- b. Is the facility having trouble with any particular resident?
- c. Are there any residents whose bills are not getting paid?
- d. Are there any residents at risk of involuntary transfer or discharge?

Encourage the facility staff to inform you of problems before a transfer or discharge notice is issued.

*In some cases, the resident may decide to take the necessary actions to prevent the discharge/transfer. In the case of an unpaid bill, the resident may choose to make the nursing home their representative payee, change POAs and/or apply for Medicaid.*

*While Ombudsmen are not bill collectors for the facility, it is in the best interest of the resident to resolve the issue sooner rather than later. In cases where the resident's actions are questionable, it may help to call a care plan conference before a transfer or discharge notice is issued to address specific concerns. This option will be discussed later in the training.*

**3. Discuss residents' rights with residents, family members, POAs, guardians, and staff on a regular basis. This may also include talking to resident and family councils.**

*Take any opportunity to talk about residents' rights. Knowledge is power. Empowerment is what occurs when Ombudsmen explain residents' rights to residents and family members. Empowerment can occur during phone consultations, visits to nursing homes and through speaking to resident and family councils. It is also important to educate facility staff about residents' rights and the transfer and discharge process. Facility policy may not coincide with state and federal regulations.*

**4. Send a letter to all administrators in your area.**

*If your Regional office does not routinely receive notices of transfer or discharge, Regional Ombudsmen should send a letter to all facility administrators in your area to ask the facility to send a copy of the notice to the Regional Ombudsman program when it is issued. The letter should also include the steps an Ombudsman will take regarding an involuntary discharge or transfer. A sample letter appears on the next page.*

## Sample letter to administrators

TO: Nursing Home Administrators in Cass, Christian, Greene,  
Logan, Jersey, Macoupin, Mason, Menard, Montgomery,  
Morgan, Sangamon and Scott Counties

FROM: Jamie Freschi, Regional Ombudsman  
I CARE Long Term Care Ombudsman Program  
620 N Walnut Street  
Springfield, IL 62702  
Phone: 217-523-8419  
Fax: 217-523-8493

SUBJECT: Notices of Involuntary Transfer or Discharge

DATE: 01/10/10

As you are aware, the long-term care ombudsman program works with facilities on various issues related to residents' rights and quality care. Overall, we have seen an increase in the number of involuntary transfers and discharges. Page three of the Notice of Involuntary Transfer or Discharge form states that your facility transmitted a copy of the notice to the long-term care ombudsman. In order to inform our office as soon as possible, please either fax, email, or mail a copy of the notice to our office the day it is issued to the resident. Once notified, we will call the facility to get further information regarding the transfer/discharge, and we will follow up with the resident and/or the resident's representative. This process will assure that residents and their representatives are informed of the rights afforded them under the Illinois Nursing Home Act and the Older American's Act. It is our goal to assure the proper transfer/discharge process is followed and that residents' rights are honored. We will advocate on behalf of the resident per the resident's direction. If the resident does not want our assistance, then we are unable to advocate on their behalf.

If there is a concern regarding financial exploitation, you may also contact the Illinois State Police Medicaid Fraud Unit at (888) 557-9503 or call your local police department to investigate the matter.

Your assistance in this matter is greatly appreciated.

## Improper Discharges

An improper discharge occurs when a facility transfers or discharges a resident without following the federal and state guidelines. Actions leading to improper discharges could include the following:

- **Not issuing the Notice of Involuntary Discharge or Transfer**

*One of the biggest problems that Ombudsmen face with improper transfers/discharges is finding out about an improper transfer or discharge after the fact. When this occurs, encourage the family or resident to file a complaint with Public Health and try to educate the administrator and facility staff about the involuntary transfer/discharge process. A resident is still has the right to request a hearing even after a move.*

- **Issuing the notice without making all attempts to meet the needs of the resident**

*The facility must make every attempt possible to meet the needs of the resident and this must be documented in the resident's record. The Ombudsman can determine exactly what the facility has done to resolve the problem and make suggestions on how to improve the situation.*

- **Implying or telling the resident/family that the facility can no longer meet the resident's needs and that they need to find another facility (without issuing the notice)**

*This implication can be construed as retaliation or the facility's unwillingness to work with the resident and/or family. The facility must prove that they cannot meet the needs of the resident and document what has been attempted. The question to ask is "what can another facility provide that you can't?" Unless the resident has a medical condition that the facility does not have the proper equipment or certification to accommodate, or the resident's level of care has surpassed the facility's certification, this excuse is not valid.*

*Sometimes facilities will tell families that they can no longer meet the resident's needs and will even offer to "help" them find a new facility without issuing the notice. The gesture may come across as helpful, but in fact, the facility is not fulfilling their end of the contract.*

Any time a facility discharges a resident without fulfilling their obligation to the resident and against the resident's wishes, the facility must issue a transfer or discharge notice.

- **Improperly filling out the notice**

*If the notice is not filled out correctly, it may not be a valid notice. The administrator may have to issue a new notice and this will affect the time-frame to request a hearing.*

- **Not explaining the notice and the right to request a hearing to the resident and the resident's representative**

*Facilities are required to explain the notice and the reason for the discharge to the resident. It is not the job of the Ombudsman to tell the resident that they have been issued a transfer/discharge notice. Before you visit the resident, make sure someone has talked to the resident about the reason for transfer/discharge and the resident's right to request a hearing.*

- **Not discharging to a safe, appropriate environment**

*The resident's home or a relative's home may not be a safe and appropriate placement. Often this is what is listed on the notice as the new address. It is the facility's responsibility to assure a safe and appropriate transfer or discharge.*

Steps Ombudsmen can take when the resident is still in the facility and faced with an improper discharge:

- **Inform the resident, the family and/or representative, and facility staff about the proper transfer/discharge procedures.**
- **Inform the resident, the family and/or representative, and facility staff about the resident's right to stay at the facility and their right to request a hearing within 10 days of receipt of the notice.**
- **With permission of the resident, schedule a care plan meeting and attend either in person or via conference call.**
- **With permission of the resident, file a Public Health complaint.**

# Part 3 – IDPH Regulations

## Notice Before Transfer

*Trainer's note: The information below is cited from 42 C.F.R. 483.12(a)(4)(5)(6) and 77 II Administrative Code 300.330. Review the information in both resources. Make sure the legal reasons for discharge are covered. Skip information that you have already covered to avoid redundancy.*

A valid discharge notice must meet the following criteria:

- **be filled out properly and in its entirety;**
- **be given to the resident and to the representative in manner that they understand;**
- **state the reason for the transfer or discharge;**
- **state the effective date of transfer or discharge;**
- **state the location to which the resident will be transferred or discharged;**
- **include the resident's right to appeal, the request for a hearing form, and a stamped envelope addressed to IDPH;**
- **include the name of the person supervising the transfer or discharge;**
- **include name, address, and telephone number of the State Ombudsman office;**
- **include mailing addresses and telephone numbers to the agencies responsible for the protection and advocacy of residents with developmental disabilities and mental illness.**

In facilities that are not certified under the Medicaid program, the facility is allowed to issue a 21 day notice to transfer or discharge, but in Medicaid certified homes, the notice allows 30 days to transfer/discharge a resident. If the resident is "private pay," but resides in a Medicaid certified home, the facility must follow the 30 day notice rule.

Special Circumstances:

- **Non-Payment for residents living in a non-certified facility.**

Prior to issuing a Notice of Involuntary Transfer or Discharge for non-payment the facility may allow 45 days for the individual to pay the bill. If the bill has not been paid, then a written notice must be sent to the resident and the representative

asking the individual to pay the bill within 30 days. If the bill still has not been paid, then the facility may issue the Notice of Involuntary Transfer or Discharge. This is a total of 75 days from the time the bill was due before a notice can be issued.

- **Endangerment to self or others in the facility.**

When residents are either a danger to themselves or others, a facility may immediately transfer them to the hospital or a psychiatric unit. Hospitalization in a psych unit requires the procedures of the Illinois Mental Health Code to be followed. If the nursing home states they will not take the resident back, they still must issue the notice as soon as the decision has been made to discharge the resident. The resident retains the right to appeal the notice.

- **When a resident has resided in the facility less than 30 days.**

This only applies for facilities not certified with CMS.

- **When the transfer/discharge involves a resident with a criminal history.**

*Refer participants to section 77 IL 300.626 Administrative Code Discharge Planning for Identified Offenders and section 77 IL Administrative Code 300.627 Transfer of Identified Offenders and go over both sections on Appendix pages 61-63 in the trainer's guide and pages 56-58 in the participant's guide.*

In all cases, the Notice of Involuntary Transfer/Discharge MUST be issued as soon as possible and the resident still has the right to appeal the discharge.

## **Bed Hold**

*Trainer's note: Go over the Federal Regulations.*

At admission, the facility must provide the resident and/or representative written notification of its bed hold policy. When a patient is hospitalized, the facility should take the resident back, even if they have issued a Notice of Involuntary Transfer/Discharge. For Medicaid recipients, the bed hold is 10 days. For certified facilities, if the resident is gone longer than 10 days, and the resident's bed is filled, then the facility must offer the resident the next available bed. For non-certified facilities, the facility must give the resident and/or representative the option of paying for the bed while away from the facility for more than 10 days.

If the facility refuses to take the resident back from the hospital and the resident wants to go back to the facility, with permission, contact the administrator to explain the bed hold policy and resident's rights surrounding the bed hold policy. If the facility still refuses, then it is recommended that the ombudsman either refer the complainant to, or with permission, call

the Regional IDPH Office, instead of the IDPH Hotline. The Regional Office may contact the facility to remind them of their responsibilities before a complaint would be investigated through the hotline. It is important to act as soon as possible to assure the resident will be able to go back to the facility.

### **Applicable Federal Regulations**

483.12(b)(1)(2) Notice of bed-hold policy and readmission--(1) Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies--

(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the nursing facility; and

(ii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.

483.12(b)(3) Permitting Resident to Return to Facility- A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident--

(i) Requires the services provided by the facility; and

(ii) Is eligible for Medicaid nursing facility services.

## **Appeal Process**

*Trainer's note: Go over Federal Regulations*

The resident and/or representative have only 10 calendar days from receipt of the notice to request a hearing to appeal the transfer or discharge. It is important to reach the resident and/or representative as soon as possible in order to explain their right to appeal. If the resident and/or representative ask the facility for assistance with filling out the request for hearing or sending it in, the facility must assist them. If the request for a hearing form is not filed within 10 calendar days, the resident will have lost the right to appeal and cannot challenge the planned move. However, under some circumstances, the ALJ may accept a late request for a hearing. An Ombudsman may not fill out the Request for Hearing without consent from the resident.

### **Applicable Federal Regulations**

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 the 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 facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

483.12(2)(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, 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.

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.

## Pre-Hearing

Within 10 calendar days of receipt of the request for hearing, IDPH should hold a pre-hearing. This timeframe may be adjusted due to individual Administrative Law Judges' schedules. The Administrative Law Judges (ALJs) preside over pre-hearings and hearings. Depending on the ALJ, the pre-hearing may be heard over the phone. Ombudsmen may attend the pre-hearing with permission of the resident or the representative when the resident is not able to make decisions. The Ombudsman's role in the pre-hearing is mainly to observe. However, if needed, the Ombudsman may ask questions for clarification or speak to advocate on behalf of the resident's rights.

Those present at the pre-hearing generally include:

- Administrative Law Judge,
- Facility administrator,
- Facility attorney,
- Resident's representative,
- Resident.

Note: the facility can only be represented by an attorney.

Those present at the pre-hearing may also include:

- Ombudsman,
- An attorney representing the resident,

- Any other individual invited by the representative or resident for support.

During the pre-hearing, the Administrative Law Judge will gather information from both sides, starting with the respondent (facility representative). After each side is addressed by the ALJ, there is open dialog to determine if the problem can be mutually resolved. The facility must prove the discharge is valid thus the burden of proof is on the facility.

If the Administrative Law Judge finds that both parties have come to a mutual agreement or if the facility withdraws the transfer or discharge notice or if the resident withdraws their request for hearing, then the pre-hearing is over and the situation is resolved.

## Hearing

The Administrative Law Judge will determine the need for the hearing under the following circumstances:

- Further information needs to be obtained for the ALJ to make a recommendation
- There is not a mutual agreement

\*Depending on the ALJ and the circumstances of the parties involved, a hearing may be held over the phone.

The hearing may occur immediately after the pre-hearing, or it may be continued to another date. The hearing is a legal procedure and is also recorded. The same individuals present at the pre-hearing may also be present at the hearing. In addition to the individuals involved in the pre-hearing others at the pre-hearing and hearing may include:

- Those subpoenaed by the Administrative Law Judge
- Witnesses brought in by either party.

At the start of the hearing, the Administrative Law Judge will turn on the recorder and swear in all persons who will give testimony. The respondent (the facility) will start by stating the facility's reasons for the IVD and then the resident, or representative will be heard. Both parties have a right to bring witnesses, cross examine, and enter exhibits. After the ALJ has heard from both sides and after all of the information has been presented, the ALJ will make a decision. The ALJ will submit a recommendation to the Department and it could take up to 90 days for a decision to be made. After a decision is made, appeal rights are still afforded to both the complainant and the respondent.

When Medicaid approval is pending, then a date for a pre-hearing is given. However, the date for the hearing is generally continued pending a decision from Medicaid.

*Trainer's note: Share an experience of a pre-hearing or hearing that you have attended.*

# Part 4 – Ombudsman Protocol

## Involuntary Discharge Checklist

Once a Notice of Involuntary Transfer/Discharge is received in the Ombudsman’s office, make sure the following steps are taken. This checklist is a suggestion for most notices; please consult with your Regional Ombudsman for further direction.

- **Is the notice filled out correctly?**     Yes     No
- **On what date was the notice given to the resident?** \_\_\_\_\_
- **Check the address of the person or persons responsible after discharge. Is it a safe, appropriate placement?**     Yes     No     Not Sure
- **Call the administrator or designated person at facility immediately and ask the following questions:**
  - Is the resident currently at the facility?     Yes     No  
If no, then where is the resident? \_\_\_\_\_
  - Has the resident been made aware of and given a copy of the notice?  
 Yes     No
    - If yes, when? \_\_\_\_\_
    - If no, why? \_\_\_\_\_
  - Is the resident able to understand the notice?     Yes     No
  - Is the representative who is listed on the notice a POA or guardian or does the resident make their own decision? \_\_\_\_\_
  - Has the representative been made aware of the notice?     Yes     No
    - If yes, when? \_\_\_\_\_
    - If no, why? \_\_\_\_\_
  - Was the representative notified by certified mail?     Yes     No
  - When was the notice sent? \_\_\_\_\_
  - Were the Rights to Appeal explained to resident and/or representative?  
 Yes     No
  - Was the Request for Hearing form given to resident and/or representative?  
 Yes     No
  - How long has the resident been at the facility? \_\_\_\_\_
  - What is the age of the resident? \_\_\_\_\_
  - Is the resident under 60?  Yes     No

- Is there better time of day or certain days that are best to visit the resident?  
○ Yes ○ No ○ N/A If yes, when? \_\_\_\_\_

➤ **Visit or call the Resident within the 10 day time-frame.** *If you are certain that the resident will understand the concern over the phone, you may call the resident. Otherwise, a visit must be made with the resident to determine if further advocacy is needed.*

- Enter the resident's room with their permission and introduce yourself.
- Make sure the resident is comfortable with discussing private information in his/her room. If not, ask where you can go to talk in private.
- Explain the Ombudsman program and why you are visiting.
- Let the Resident know you are their advocate and the discussion is confidential.
- (Based on your observation) Is the resident capable of understanding the notice?  
○ Yes ○ No
- Has the resident received the notice? ○ Yes ○ No
- Was the Request for Hearing form included? ○ Yes ○ No
- Did a staff member explain the resident's right to appeal the discharge to the Resident? ○ Yes ○ No If no, explain the right to appeal and include the 10 day time frame.
- Explain the involuntary discharge process.
- Does the resident wish Ombudsman assistance? ○ Yes ○ No
- Do you have permission to talk to the representative? ○ Yes ○ No
- Do you have permission to talk to staff at the facility? ○ Yes ○ No
- Is there anyone the resident does not wish for you to discuss the concern?  
○ Yes ○ No If yes, then who? \_\_\_\_\_
- Is the resident in agreement with the discharge plan? ○ Yes ○ No

➤ **Proceed with the advocacy as directed by the resident and under direction of the RO.**

➤ **Call the representative, provide the information below, and ask the following questions:** *(Note: If the resident is able to give consent and asks you **not** to contact the representative, then you will skip this section. There may be times when you will call the representative prior to visiting or calling the resident. Consult with your RO in these instances. It is okay to contact the representative and explain our program and residents' rights. However, you may not advocate on behalf of the resident without permission and without visiting the resident first.)*

- Introduce yourself, briefly explain the program and explain why you are calling.
- Has the representative received the notice? ○ Yes ○ No

- Let the representative know you are the resident's advocate and you would like to explain the resident's rights.
- What is the relationship of the representative to the resident? Are they the POA or guardian or do they assist the resident informally? \_\_\_\_\_
- In the representative's opinion, is the resident capable of understanding the notice?    Yes    No
- Was the Request for Hearing form included with the notice?    Yes    No
- Did the administrator explain the right to appeal the discharge to the representative and/or the resident?    Yes    No   If no, explain the right to appeal and include the 10 day time frame.
- Explain the involuntary discharge process.

➤ **Go to the section that applies to the reason for discharge.**

## Section 1: Late or Non-Payment

### ➤ During the initial phone call, ask the administrator or designated facility staff these additional questions:

- Is the resident Private Pay, or on Medicare or Medicaid? \_\_\_\_\_
- Does the resident have private insurance? \_\_\_\_\_
- How much does the resident owe the facility? \_\_\_\_\_
- Was reasonable and appropriate notice given to resident and/or representative prior to issuing the discharge notice?     Yes     No  
Explanation: \_\_\_\_\_
- What months are owed? \_\_\_\_\_
- Who has the resident designated to pay the bill? \_\_\_\_\_
- Has an application been made to Public Aid?     Yes     No     N/A  
If yes, when was the application filed? \_\_\_\_\_
- Does the administrator believe the resident may be financially exploited by the representative?     Yes     No  
If yes, has or will the administrator call the Illinois State Police, Medicaid Fraud Unit?     Yes     No  
Explain: \_\_\_\_\_  
\_\_\_\_\_

### ➤ During your initial visit or phone call, ask the resident these additional questions:

- Is the resident private pay, or on Medicare or Medicaid? \_\_\_\_\_
- Does the resident receive Social Security?     Yes     No    If yes, where are the checks sent? \_\_\_\_\_
- Does the resident receive a pension?     Yes     No    If yes, where are the checks sent? \_\_\_\_\_
- Does the resident receive Veteran's Assistance?     Yes     No    If yes, where are the checks sent? \_\_\_\_\_
- Does someone help the resident with their bills?     Yes     No    If yes, then who? \_\_\_\_\_
- Is the resident satisfied with the individual(s) who are assisting him/her with their finances?     Yes     No     N/A
- Explain to the resident what "representative payee" means. Does the resident want the facility to be his or her Representative Payee?     Yes     No
- Does the resident need assistance in applying for Medicaid?     Yes     No     N/A

*If your Ombudsman program assists residents with Medicaid applications, explain the Medicaid application process and how you can help. If your program does not assist with Medicaid applications, explain that the facility should assist them in getting an application if they do not have someone (POA, guardian, family) to assist them with their finances.*

➤ **Proceed with advocacy as directed by the resident and under direction of the RO.**

➤ **During the initial call with the Representative, ask the following questions:**

- Is the resident private pay, on Medicaid or on Medicare? \_\_\_\_\_
- Does the resident receive Social Security?     Yes     No    If yes, where are the checks sent? \_\_\_\_\_
- Does the resident receive a pension?     Yes     No    If yes, where are the checks sent? \_\_\_\_\_
- Does the resident receive Veteran's Assistance?     Yes     No    If yes, where are the checks sent? \_\_\_\_\_



➤ **During the initial call with the Representative ask the following questions:**

- What has the facility done to assure the safety of individuals? \_\_\_\_\_  
\_\_\_\_\_
- Was the facility aware of the behaviors prior to admission?     Yes     No
- What is the date of the last care plan? \_\_\_\_\_
- Have the “behaviors” been addressed in the care plan?     Yes     No
- Does the facility follow the care plan?     Yes     No
- Did the representative participate in the last care plan meeting?  
 Yes     No    If no, then why not? \_\_\_\_\_

### Section 3: Welfare and Needs Cannot Be Met

➤ **During the initial phone call, ask the administrator or designated facility staff these additional questions:**

- What welfare and needs aren't being met? \_\_\_\_\_
- Were you aware of the resident's needs prior to admission to the facility?  
○ Yes   ○ No
- What are the resident's diagnoses? \_\_\_\_\_
- What has the facility done to resolve the issues? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What is the facility currently doing to assure the resident's needs are being met?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Is it documented in the resident's clinical record by his/her physician that the resident's needs cannot be met at the facility?   ○ Yes   ○ No
- What is the date of the last care plan? \_\_\_\_\_
- Did the resident participate in the last care plan meeting?   ○ Yes   ○ No  
If no, then why not? \_\_\_\_\_
- Did the representative participate in the last care plan meeting?  
○ Yes   ○ No   If no, then why not? \_\_\_\_\_  
\_\_\_\_\_

➤ **During your initial visit or phone call, ask the resident these additional questions:**

- Did the resident attend the last care plan meeting?   ○ Yes   ○ No   If no, then why not? \_\_\_\_\_
- Is the resident in agreement with the care plan?   ○ Yes   ○ No
- Is the resident interested in having a new care plan to address the concerns?   ○ Yes   ○ No   If yes, does the resident wish to have an Ombudsman present at the care plan meeting?   ○ Yes   ○ No
- What are the resident's concerns? \_\_\_\_\_  
\_\_\_\_\_
- What has the facility done to alleviate the resident's concerns? \_\_\_\_\_  
\_\_\_\_\_

➤ **Proceed with advocacy as directed by the resident and under direction of the RO.**

➤ **During the initial call with the Representative ask the following questions.**

- What welfare and needs aren't being met? \_\_\_\_\_
- Is anything addressed in the care plan related to these issues?     Yes     No  
If Yes, then what/how? \_\_\_\_\_
- Was the facility aware of the resident's needs prior to admission to the facility?  
 Yes     No
- What are the resident's diagnoses? \_\_\_\_\_
- What has the facility done to resolve the issues? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What is the facility currently doing to assure the resident's needs are being met?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Is it documented in the resident's clinical record by his/her physician that the resident's needs cannot be met at the facility?     Yes     No

#### Section 4: Health of individuals in facility would otherwise be endangered

➤ **During the initial phone call, ask the administrator or designated facility staff these additional questions:**

- What health dangers does the resident pose to others in the facility?

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- Is the “endangerment” documented in the resident’s clinical file by his/her physician?  Yes  No
- Did the resident have these health concerns prior to being admitted to the facility?  Yes  No
- What has the facility done to protect the health of all residents in the facility?

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- Was IDPH notified of the health risk?  Yes  No
- Was the local Health Department notified  Yes  No
- What was the local Health Department’s recommendation? \_\_\_\_\_

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➤ **During your initial visit or phone call, ask the resident these additional questions:** *Consult with your RO to determine the safety of a face to face visit. This could be an instance where the Ombudsman may not be able to advocate for the resident to stay in the facility. The Ombudsman must always advocate for the safety of all residents in the facility.*

- What are the resident’s concerns? \_\_\_\_\_  
\_\_\_\_\_
- Did the resident have this condition prior to being admitted to the facility?  
 Yes  No If no, then does the resident know where he/she acquired the health concern? \_\_\_\_\_
- Is this concern addressed in the care plan?  Yes  No  Don’t know

➤ **Proceed with advocacy as directed by the resident and under direction of the RO.**

○ **During the initial call with the Representative ask the following questions:**

- What health dangers does the resident pose to others in the facility?

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- Did the resident have these health concerns prior to being admitted?  
○ Yes   ○ No
  - What has the facility done to protect the health of all residents in the facility?
- 
-

## Section 5: Your Health Has Improved and You No Longer Need the Services Provided

➤ **During the initial phone call, ask the administrator or designated facility staff these additional questions:**

- Does the resident have services set up at home if needed?  Yes  No
- Does the resident have family support at home?  Yes  No
- Has the resident's payer source stopped or threatened to stop payments?  
 Yes  No
- Has the resident's doctor documented that the resident no longer needs the services provided?  Yes  No
- Is the administrator or designated staff member aware of any safety concerns at home?  Yes  No If yes, what are the concerns and how are they being addressed?

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➤ **During your initial visit or phone call, ask the resident these additional questions:**

- Does the resident have services set up at home if needed?  Yes  No
- Does the resident have family support at home?  Yes  No
- Has the resident's payer source stopped or threatened to stop payments?  
 Yes  No
- Has the resident spoken to their doctor about their wishes/concerns?  
 Yes  No
- Why does the resident want to stay in the facility? Or, why does the resident not want to go home?

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- Is the resident concerned about their safety at home?  Yes  No If yes, what are the concerns?

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- If applicable, does the resident wish you to make a referral to a community social service agency?    Yes    No   If yes, which one? \_\_\_\_\_

➤ Note: It is probably not necessary call or speak to the representative since the resident is most likely capable of making decisions in these circumstances.

# Part 5 – Challenging Situations

## Under 60 Residents

Some Ombudsman programs do not serve residents who are under 60. When in doubt, check with your Regional Ombudsman. If your program does not advocate for this population, please refer to a local agency such as a Center for Independent Living or the Office of the Inspector General.

Programs that do advocate on behalf of residents who are under 60 years of age should follow the same procedures as you would for a resident who is over 60. However, if there are other “challenges” associated with the Involuntary Discharge, review the information and suggestions that follow and consult with your Regional Ombudsman.

## Incapacitated Residents with no Representative

At this time, Ombudsmen do not have authority to advocate on behalf of an incapacitated resident by requesting or participating in any legal forum, including a pre-hearing or hearing with IDPH. If the resident is incapacitated and has no representative, the facility may need to petition for State or Public Guardianship. If the resident has a representative and he or she is not fulfilling his/her fiduciary duties, then the facility could take the following steps:

- In cases of guardianship, the facility may write their concerns to the court in the county where guardianship was obtained.
- In cases of suspected financial exploitation, the facility may contact the appropriate authorities. Contact information for all authorities is included in the section on financial exploitation on page 37 in the trainer’s guide and 33 in the participant’s guide.

## Residents with Mental Illnesses

More and more facilities are admitting residents with mental illness. Some facilities are certified to accept residents with serious mental illness and must follow rules under “Sub-Part S” of the Administrative Code. Most facilities are not certified or equipped to accept or care for residents who are mentally ill. Facilities will typically use the categories “safety of others” and/or “welfare and needs cannot be met” when issuing the Notice of Involuntary Discharge to individuals with mental illness.

Important factors to consider in these cases include:

- Is this a qualified discharge?

- Did the facility make every attempt to prevent the discharge?
- Are any residents in danger?
- Is the resident getting all of his/her needs met?

## **Resident's with "Behaviors"**

There are times when a facility will issue a discharge due to "behaviors" under the categories "safety of others" or "welfare and needs of the resident cannot be met". The key question to ask in these cases is "what can another facility provide the resident that the current facility can't provide?" This is especially true for skilled care facilities, facilities with specialized Alzheimer's units and facilities with Subpart S certification. Unless the behaviors are dangerous to others or to the resident, there are few reasons to justify a discharge due to behaviors.

Other questions to consider are:

- What are the potential causes of the behaviors?
- Are the behaviors a part of the resident's disease?
- Did an event happen to cause the behaviors? (i.e. a loved one died)
- Is the resident able to communicate?
- Could the resident be in pain?
- When do the behaviors occur?
- Who is present when the behaviors occur?
- Does the resident respond differently to different people?
- What has been done to attempt to change the behaviors?
- Is the resident's medication being administered at the correct times and is the resident taking their medication?
- Does the resident need to see a physician?

Encourage the family and facility to call a care plan meeting to address the behaviors and attend with permission of the resident. If you cannot attend in person, ask if you can attend via phone conference. This will allow all key players to come together and work out a plan. If the resident is able to understand, make sure they are encouraged to attend the meeting. Let the family know they can request specific staff members to attend. If a resident does not show behaviors with certain staff members, make sure they are present at the meeting so they can

share how they successfully interact with the resident. Some facilities will try to issue an emergency discharge to the hospital for a psychiatric evaluation due to behaviors. See the next section for details on how to handle that situation.

## Emergency Transfers or Discharges

There are times when a resident needs immediate care that the facility cannot provide. This may be especially true during a medical emergency or when a resident has become a danger to self or others. Such transfers may be justified. There is no requirement that the facility give advance notice before a resident is transferred involuntarily due to an emergency. However, the facility must still fill out the proper paperwork at the time the decision is made to permanently discharge the resident. When the facility refuses to allow the resident to return without going through the proper transfer and discharge process, the resident's right to request a hearing has been violated. The biggest problem with this situation is that the facility will immediately remove the resident and transfer them to the hospital, and once out of the facility, it is nearly impossible to "force" the facility to take the resident back. Also, IDPH cannot require the facility take the resident back simply because there was a request for hearing.

In cases of emergency transfers or discharges, the Ombudsman Program is most often notified after the fact. Sometimes families and residents do not want to return to the facility when they do not feel "welcome" back. Other times, the family and resident want to go back to the facility. Even with the threat of an IDPH tag for failure to give notice of discharge, some facilities will still not re-admit certain residents. In these cases, the Ombudsman can encourage the resident or representative to file an IDPH complaint. With consent of the resident or representative, the Ombudsman can file a complaint with IDPH.

*Trainer note: Feel free to provide an example of a case you worked on regarding an emergency transfer or discharge. This can be a successful or unsuccessful example. If using an unsuccessful case, then offer alternate solutions as to what could have been done differently. Participants will learn either way because all cases are different.*

## Financial Exploitation

Financial exploitation has been discussed throughout this training. However, there are additional challenges to working with residents who are being involuntarily discharged from a facility due to financial exploitation. Some of the challenges are:

- **The resident does not want our assistance.**

It is the responsibility of the Ombudsman to make sure the resident understands the assistance that an Ombudsman can provide and the available choices or options the

resident has to change the situation. If the resident does not want our assistance even after our explanation, then we must respect their decision and close the case. Give the resident an Ombudsman brochure with your name on it and let them know they can reach an Ombudsman at the number on the brochure if they change their mind.

- **The resident won't change his/her agent under a POA when the agent is the alleged perpetrator.**

There are times when the resident refuses to believe their agent under a POA or representative would financially exploit him or her and there are times when the resident is fully aware of the situation, but refuses to change their agent. In either case, a resident may change their mind at any time. It is important to keep checking in with the resident to see how they are doing and give them the opportunity to express a desire to change their agent under a POA. However, at some point, the Ombudsman needs to accept the resident's wishes and close the case. Give the resident an Ombudsman brochure with your name on it and let them know they can reach an Ombudsman at the number on the brochure if they change their mind.

*Trainer's note: Let the participants know there is an additional tool kit written by Regional Ombudsman, Nancy Schold, specifically on Financial Exploitation.*

- **The resident will not allow the ombudsman program to refer to the police or the resident will not press charges.**

Another challenge in dealing with financial exploitation cases is when the resident refuses to press charges against the alleged perpetrator. It is their choice and we cannot refer to the police without the permission of the resident, even if you believe there is potential exploitation. It is not uncommon for residents to refuse to press charges against their loved ones. Not pressing charges does not mean that you cannot successfully resolve the involuntary discharge.

- **The police will not accept the referral as a case.**

While you have no control whether or not the police accept a referral, there are other options to consider. However, it is important to develop a rapport with the officers in your area who may be called to investigate. Questions to consider:

1. Is there an Elderly Services Officer in the city or county of the resident?
2. Do you have a good working relationship with the ESO?

3. Can you call or e-mail the ESO or another officer for advice or direction with a case?
4. Are the local police aware of the Ombudsman program and aware of residents' rights?
5. Do you know State Police Officers that you can call directly and ask them to follow up on a case?
6. Have all police options been attempted? Sometimes the local police won't investigate, but State or County police will. Don't take no for an answer until there is no one left to ask.

- **Other options:**

If you are having trouble with a case that involves illegal activity, such as financial exploitation, and the police will not take the referral, with permission of the resident and approval from your Regional Ombudsman, you may refer the case to the Attorney General's Office, to the Office of the Inspector General or to the local State's Attorney's Office.

- **Attorney General's Office** - The Attorney General's Senior Citizens Consumer Fraud Hotline number is 1-800-243-5377 or 1-800-964-3013 (TTY). The Attorney General's Website is [www.IllinoisAttorneyGeneral.gov](http://www.IllinoisAttorneyGeneral.gov) .
- **Office of the Inspector General for Social Security Fraud** - The Office of the Inspector General (OIG) investigates instances of Social Security-related fraud. To report Social Security Fraud, call 1-800-269-0271, fax 410-597-0118 or report online at [www.socialsecurity.gov/oig/hotline/index.htm](http://www.socialsecurity.gov/oig/hotline/index.htm) . Written complaints may also be sent to: Social Security OIG Hotline, P.O. Box 17768, Baltimore, MD 21235.

When filing a report, keep in mind that the OIG must have as much identifying information as possible in order to act on your allegation. The Social Security Administration website ([www.socialsecurity.gov](http://www.socialsecurity.gov)) suggests that you provide as much of the following information as possible:

- "Name, address, telephone number, and Social Security number (SSN) of the person suspected of fraud. If the SSN is unknown, include as much identifying information as possible; e.g., the individual's date and place of birth, father's name, and mother's birth name;
- A complete description of the potential fraud incident; and

- Your name, address, and telephone number.”
- **Office of the Inspector General for Medicare Fraud.** The OIG also investigates Medicare Fraud. According to the Medicare website ([www.medicare.gov](http://www.medicare.gov)) , to report Medicare Fraud call 1-800-HHS-TIPS (1-800-447-8477), fax 1-800-223-2164 (no more than 10 pages), or e-mail [HHSTips@oig.hhs.gov](mailto:HHSTips@oig.hhs.gov). Written reports may be mailed to The Office of the Inspector General, HHS TIPS Hotline, P.O. Box 23489, Washington, DC 20026.
- **Illinois State Police for Medicaid Fraud.** To report Medicaid fraud, call the hotline at 888-557-9503 or contact your nearest Medicaid Fraud Control Unit at one of the locations listed below.

**Northern Illinois**

Illinois State Police  
Medicaid Fraud Control Unit  
8151 W. 183rd Street, Suite F  
Tinley Park, Illinois 60477  
Phone: (708) 633-5500

**Central Illinois**

Illinois State Police  
Medicaid Fraud Control Unit  
801 South Seventh Street  
Suite 200 – M  
P.O. Box 19461  
Springfield, Illinois 62794-9461  
Phone: (217) 785-3322

**Southern Illinois**

Illinois State Police  
Medicaid Fraud Control Unit  
1100 Eastport Plaza Drive  
Collinsville, Illinois 62234  
Phone: (618) 346-3434

## Part 6 – Case Studies

*Trainer's note: This section can be skipped if you are running out of time. However, it is a good way to apply what was discussed to a real-life situation. You may use your own cases as examples instead of the ones mentioned in this training. You may simply share information about a case that was successfully resolved and perhaps on another case that wasn't resolved to the satisfaction of the resident and ask the participants what else could have been done. Both cases listed below are real cases from PSA 07. To protect confidentiality, no names or identifying information are mentioned.*

### **Case #1 Mrs. Jones**

#### **Scenario**

There was already an open case on the resident before a notice of transfer or discharge was issued. The complainant was the guardian of the resident and there were three complaints within the case. One of the complaints was that the facility was threatening to discharge the resident. Eight days after the initial complaint, a notice was officially issued. The reason for the involuntary discharge was listed as “unable to meet the needs of the resident”.

During the initial complaint intake and subsequent calls from the guardian, the Ombudsman explained residents' rights in detail and explained the process of involuntary discharge multiple times. Some of the challenges of this case were identified immediately: the resident was under 60; the resident had a severe mental illness; the guardian was suspected to have mental illness; the resident's doctor had dropped her as a patient; and the resident refused to talk to a Volunteer Ombudsman on two attempted visits.

The facility was licensed under Subpart S, and theoretically could have met the needs of the resident. The guardian wanted the resident to stay where she was because she was the happiest she had ever been in any facility. He refused to look at any other facilities and stated he was happy with her care, except for the shower situation. He also stated he had words with the resident's psychiatrist, but didn't want another doctor for her. The guardian was easily agitated and often yelled at facility staff, doctors and even the Ombudsman. In spite of his frustration, the guardian continued to seek help from the Ombudsman program.

With permission of the guardian, the Ombudsman called the administrator to discuss the discharge notice. The administrator indicated that they could not keep the resident if she had no psychiatric care and the guardian was refusing to look for another doctor. The administrator also stated that most psychiatrists in town wouldn't take the resident as a patient because both the resident and the guardian were described as “manipulative and destructive”. The administrator stated that she issued the discharge because the psychiatrist said the

resident needed a psychiatric facility, not a nursing home. The administrator said she was beginning to question the guardian's competence and judgment. The facility Administrator properly completed the discharge notice, provided a copy of the notice to the guardian and the resident and informed them of their rights. The guardian refused to sign the Request for Hearing, but wanted his wife to stay in the facility.

### **What are the next steps you would take in this case?**

*Trainer's note: Allow time for participants to discuss the case and ask questions. Let them come up with possible next steps for this case.*

*If questions are raised, here is additional information on the case: The guardian threatened facility staff and the police were called. The Ombudsman's office called an ESO to have the guardian's record checked and there was nothing on his record. The guardian refused over and over to sign any papers from the facility. The guardian wanted help, but wouldn't listen to advice and would often become agitated with the Ombudsman. Permission was given by the guardian to talk to facility staff.*

### **Next steps actually taken in this case:**

The guardian was finally convinced to sign the Request for Hearing. The Regional Ombudsman (RO) decided to attempt to visit the resident to see if the resident would talk to a female (the volunteer was a male). The intent of the visit was also to talk to the administrator (ADM) and/or the director of nursing (DON). After the RO explained who she was and why she was there, the resident turned over in bed, faced the wall and wouldn't respond at all. When the RO told the resident she was going to go the resident thanked her for stopping by. The RO had a long meeting with the ADM and the DON. The DON was also the nurse in charge of facility care for residents under Subpart S. It became clear that the biggest problem the facility had was dealing with the actions/behaviors of the guardian, not the resident. Both the ADM and the DON agreed that the resident was doing fine, but the problem remained that her psychiatrist refused to keep her as a patient as long as the guardian was involved with her care. The RO asked if the doctor would reconsider taking her as a patient. During the meeting, the DON called the psychiatrist and he agreed to take the resident back temporarily and under certain conditions. The RO explained that she didn't think the facility would win if the case went to hearing because their issues were with the guardian, not the resident. The administrator stated she would have to consult with the facility attorney.

The ADM and the DON also agreed that the guardian and the resident really do care for each other and he really does take good care of her; he was just worried about her and wanted the best for her. At this time the facility did not view him as a threat.

## **What are the next steps you would take?**

*Trainer's note: Allow time for participants to discuss the case and ask questions. Let them come up with possible next steps for this case.*

*Additional information: The psychiatrist agreed to take the resident back until she was discharged while also considering taking her back permanently if the guardian would agree to the psychiatrist's boundaries.*

### **Next steps actually taken:**

All parties agreed to a meeting. The meeting was held with the guardian, the administrator, the DON and two Ombudsmen. Everyone agreed to a plan; all issues were resolved. The facility withdrew the Notice of Involuntary Transfer or Discharge that same day so there was no need for a pre-hearing. Case closed and resolved in one month and two days.

## **Case #2 Mr. Smith**

### **Scenario:**

The Regional Ombudsman's office received a Notice of Involuntary Transfer or Discharge via fax. The Community Ombudsman for the facility called the facility and the administrator stated that the resident was under 60. The Administrator stated that the resident had been in a coma while he was in the facility then left to be "rehabilitated" and came back because he needed skilled care. She stated they had "re-adjusted his meds".

The Ombudsman asked the administrator about the reason for discharge. The Administrator stated that the resident screams and hits. She stated that the resident had hit staff members hard enough to cause internal injuries. The resident had a private room and had not harmed any other residents. The Administrator stated that resident's wife wanted him to go to a state psychiatric hospital, but after speaking to the wife, the Ombudsman learned that this was not true.

The discharge notice had been explained to the resident but he did not have memory of the explanation. The resident was unable to live in the community, even though his home address was listed as the "discharge to" location. The Ombudsman called the wife of the resident and she stated she was surprised to have received the notice because he had only been in the facility for two weeks. She indicated that she could not care for him at home. The Ombudsman explained the resident's rights, the involuntary discharge process, and the process for requesting a hearing to the resident's wife. A Volunteer Ombudsman visited the resident. During the visit, the resident stated that he wanted to stay in the facility. The resident's wife filed a request for a hearing. Two days later, the facility withdrew the notice.

Approximately one month later, the Ombudsman spoke to the resident's wife again. At that point in time, she thought his medications were all under control and things were going well. However, about a month later, another discharge notice was issued. The Ombudsman immediately called the resident's wife and was told that the resident had already been transferred to a facility 45 miles away. The resident's wife said she did not want him in a facility that did not want him there, but this transfer made it very difficult for her and her young children to visit him.

**What else could have been done?**

*Trainer's note: Allow the participants to brainstorm. Ask them to identify the challenges of this case? Also note that the resident is now in a facility outside of PSA 07.*

## Part 7 – Tips and Closing Remarks

*Trainer's note: Feel free to add your own tips and closing remarks. Ask the participants if they have any further questions or comments. Thank them for attending the training.*

Working on cases regarding discharges and transfers can be very involved and challenging. Each case is different and will require critical thinking and a plan of action. Please utilize the checklist provided in this training as a tool to make sure all information is gathered and always check in with the resident to make sure you are acting according to their wishes. Also, consult with your Regional Ombudsman as necessary.

# Sources

1. Title 77 Chapter 1 Subpart c Administrative Rules Administrative Code Part 300 Skilled Nursing and Intermediate Care Facilities, available online at:  
<http://www.ilga.gov/commission/jcar/admincode/077/07700300sections.html>
2. Title 42 Public Health CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES PART 483--REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES available online at (Code of federal Regulations) [http://www.access.gpo.gov/nara/cfr/waisidx\\_02/42cfr483\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/42cfr483_02.html)
3. 210 ILCS 45/Nursing Home Care Act available online at  
[http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1225&ChapAct=210 ILCS 45/&ChapterID=21&ChapterName=HEALTH+FACILITIES&ActName=Nursing+Home+Care+Act%2E](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1225&ChapAct=210%20ILCS%2045/&ChapterID=21&ChapterName=HEALTH+FACILITIES&ActName=Nursing+Home+Care+Act%2E)
4. HFS 89 ILLINOIS ADMINISTRATIVE CODE Chapter 1, Section 146.255 Subchapter d **Section 146.255 Discharge** website: <http://www.sfillinois.com/assets/146.pdf>
5. Social Security Administration Website: [www.socialsecurity.gov](http://www.socialsecurity.gov)
6. Medicare Website: [www.medicare.gov](http://www.medicare.gov)
7. Office of Inspector General Website: <http://inspectorgeneral.il.gov/about.htm>
8. Illinois State Police Medicaid Fraud Unit Website:  
<http://www.isp.state.il.us/crime/medicaidfraud.cfm>

# Appendices

- A. Code of Federal Regulations 42 CFR 483.12
- B. Title 77 Chapter 1 Subpart c Part 300 Skilled Nursing and Intermediate Care Facilities Code
  - 1. Section 300.3300 Transfer or Discharge
  - 2. Section 300.626 Discharge Planning for Identified Offenders
  - 3. Section 300.627 Transfer of an Identified Offender
- C. PART 295 ASSISTED LIVING AND SHARED HOUSING ESTABLISHMENT CODE  
SECTION 295.6000 RESIDENT RIGHTS
- D. PART 340 ILLINOIS VETERANS' HOMES CODE SECTION 340.1470 TRANSFER OR  
DISCHARGE
- E. PART 350 INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE
  - 1. SECTION 350.3300 TRANSFER OR DISCHARGE
  - 2. SECTION 350.636 DISCHARGE PLANNING FOR IDENTIFIED OFFENDERS
  - 3. SECTION 350.637 TRANSFER OF AN IDENTIFIED OFFENDER
- F. HFS 89 ILLINOIS ADMINISTRATIVE CODE Chapter 1, Section 146.255 Subchapter d  
Section 146.255 Discharge
- G. IDPH Notice of Involuntary Transfer or Discharge and Opportunity for Hearing

# **APPENDIX A**

**[Code of Federal Regulations]**

**[Title 42, Volume 3]**

**[Revised as of October 1, 2005]**

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TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF  
HEALTH AND HUMAN SERVICES (CONTINUED)

PART 483\_REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES--Table  
of Contents

Subpart B\_Requirements for Long Term Care Facilities

Sec. 483.12 Admission, transfer and discharge rights.

(a) Transfer and discharge--

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the 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 facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

(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, 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.

(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.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a) (6) of this section.

(5) Timing of the notice. (i) Except when specified in paragraph (a) (5) (ii) of this section, the notice of transfer or discharge required under paragraph (a) (4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) the safety of individuals in the facility would be endangered under paragraph (a) (2) (iii) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (a) (2) (iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a) (2) (ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a) (2) (i) of this section; or

(E) A resident has not resided in the facility for 30 days.

(6) Contents of the notice. The written notice specified in paragraph (a) (4) of this section must include the following:

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(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) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(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.

(8) Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in Sec. 483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

(b) Notice of bed-hold policy and readmission--(1) Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies--

(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the nursing facility; and

(ii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (b) (3) of this section, permitting a resident to return.

(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b) (1) of this section.

(3) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident--

(i) Requires the services provided by the facility; and

(ii) Is eligible for Medicaid nursing facility services.

(4) Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in Sec. 483.5(c) of this subpart), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

(c) Equal access to quality care.

(1) A facility must establish and maintain identical policies and

practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment;

(2) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in Sec. 483.10(b) (5) (i) and (b) (6) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(d) Admissions policy.

(1) The facility must--

(i) Not require residents or potential residents to waive their rights to Medicare or Medicaid; and

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(ii) Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(2) The facility must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(3) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to

any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,--

(i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term ``nursing facility services'' so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and

(ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(4) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

[56 FR 48869, Sept. 26, 1991, as amended at 57 FR 43924, Sept. 23, 1992; 68 FR 46072, Aug. 4, 2003]

# **APPENDIX B**

## **Title 77 Chapter 1 Subpart c Part 300 Skilled Nursing and Intermediate Care Facilities Code**

### **Section 300.3300 Transfer or Discharge**

### **Section 300.626 Discharge Planning for Identified Offenders**

### **Section 300.627 Transfer of an Identified Offender**

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 300 SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE**  
**SECTION 300.3300 TRANSFER OR DISCHARGE**

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**Section 300.3300 Transfer or Discharge**

- a) *A resident may be voluntarily discharged from a facility after he gives the administrator, a physician, or a nurse of the facility written notice of his desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his guardian or if the resident is a minor, his parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)*
  
- b) Each resident's rights regarding involuntary transfer or discharge from a facility shall be as described in subsections (c) through (y) of this Section.
  
- c) **Reasons for Transfer or Discharge**
  - 1) *A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:*
    - A) *for medical reasons.*
    - B) *for the resident's physical safety.*
    - C) *for the physical safety of other residents, the facility staff or facility visitors.*
    - D) *for either late payment or nonpayment for the resident's stay, except as prohibited by Title XVIII and XIX of the Federal Social Security Act. For purposes of this Section, "late payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after submission of a bill, the facility may send a*

*notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection does not apply to those residents whose care is provided under the Illinois Public Aid Code. (B) (Section 3-401 of the Act)*

2) Prohibition of Discrimination

A) *A facility participating in the medical assistance program is prohibited from failing or refusing to retain as a resident any person because the resident is a recipient of or an applicant for the medical assistance program. For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling ten days or less following a hospital admission. The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the ten-day period. (Section 3-401.1(a) of the Act)*

B) *A facility which violates subsection (c)(2)(B) of this Section shall be guilty of a business offense and fined not less than \$500 nor more than \$1,000 for the first offense and not less than \$1,000 nor more than \$5,000 for each subsequent offense. (Section 3-401.1(b) of the Act)*

d) *Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under subsection (j) of this Section and by a minimum written notice of 21 days. The 21-day requirement shall not apply in any of the following instances:*

1) *When an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician; (Section 3-402(a) of the Act)*

2) *When the transfer or discharge is mandated by the physical safety of other residents as documented in the clinical record. (Section 3-402(b) of the Act)*

- e) *The notice required by subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:*
- 1) *The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)*
  - 2) *The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)*
  - 3) *A statement in not less than 12-point type, which reads:*  
  
*"You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within ten days after receiving this notice. If you request a hearing, it will be held not later than ten days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed below." (Section 3-403(c) of the Act)*
  - 4) *A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)*
  - 5) *The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)*
- f) *A request for a hearing made under subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)*
- g) *A copy of the notice required by subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Public Aid. (Section 3-405 of the Act)*
- h) *When the basis for an involuntary transfer or discharge is the result of an action by the Department of Public Aid with respect to a recipient of Title XIX and a hearing*

*request is filed with the Department of Public Aid, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Public Aid or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)*

- i) *When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)*
- j) *The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's clinical record. (Section 3-408 of the Act)*
- k) *The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)*
- l) *A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his parent shall have the opportunity to file a request for a hearing with the Department within ten days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)*
- m) *The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than ten days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)*
- n) *The hearing before the Department provided under subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 of the Act. In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge. (Section 3-412 of the Act)*
- o) *If the Department determines that a transfer or discharge is authorized under subsection (c) of this Section, the resident shall not be required to leave the facility before the 34<sup>th</sup> day following receipt of the notice required under subsection (d) of this Section, or the tenth day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or*

*discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (B) (Section 3-413 of the Act)*

- p) *The Department of Public Aid shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by subsection (c) of this Section. (Section 3-414 of the Act)*
- q) *The Department may transfer or discharge any resident from any facility required to be licensed under this Act when any of the following conditions exist:*
  - 1) *Such facility is operating without a license; (Section 3-415(a) of the Act)*
  - 2) *The Department has suspended, revoked or refused to renew the license of the facility as provided under Section 3-119 of the Act. (Section 3-415(b) of the Act)*
  - 3) *The facility has requested the aid of the Department in the transfer or discharge of the resident and the Department finds that the resident consents to transfer or discharge; (Section 3-415(c) of the Act)*
  - 4) *The facility is closing or intends to close and adequate arrangement for relocation of the resident has not been made at least 30 days prior to closure; or (Section 3-415(d) of the Act)*
  - 5) *The Department determines that an emergency exists which requires immediate transfer or discharge of the resident. (Section 3-415(e) of the Act)*
- r) *In deciding to transfer or discharge a resident from a facility under subsection (q) of this Section, the Department shall consider the likelihood of serious harm which may result if the resident remains in the facility. (Section 3-416 of the Act)*
- s) *The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under subsections (c) through (q) of this Section including information on available alternative placements. Residents shall be involved in planning the transfer or discharge and shall choose among the available alternative placements, except that where an emergency makes prior resident involvement impossible, the Department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement. Where the Department makes or participates in making the relocation decision, consideration shall be given to proximity to the resident's relatives and friends. The resident shall be allowed three visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate transfer or*

*discharge requires reduction in the number of visits. (Section 3-417 of the Act)*

- t) *The Department shall prepare resident transfer or discharge plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergencies and where possible in emergencies, the Department shall design and implement such plans in advance of transfer or discharge. (Section 3-418 of the Act)*
- u) *The Department may place relocation teams in any facility from which residents are being discharged or transferred for any reason, for the purpose of implementing transfer or discharge plans. (Section 3-419 of the Act)*
- v) *In any transfer or discharge conducted under subsections (q) through (t) of this Section the Department shall:*
  - 1) *Provide written notice to the facility prior to the transfer or discharge. The notice shall state the basis for the order of transfer or discharge and shall inform the facility of its right to an informal conference prior to transfer or discharge under this Section, and its right to a subsequent hearing under subsection (x) of this Section. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within four working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within four working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the Department may affirm, modify or overrule its previous decision. Except in an emergency, transfer or discharge may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held; and (Section 3-420(a) of the Act)*
  - 2) *Provide written notice to any resident to be removed, to the resident's representative, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which transfer or discharge is ordered and shall inform the resident of the resident's right to challenge the transfer or discharge under subsection (x) of this Section. The Department shall hold an informal conference with the resident or the resident's representative prior to transfer or discharge at which the resident or the representative may present any objections to the proposed transfer or discharge plan or alternative placement. (Section 3-420(b) of the Act)*
- w) *In any transfer or discharge conducted under subsection (q)(5) of this Section, the Department shall notify the facility and any resident to be removed that an emergency has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the*

*Department shall provide written notice to the facility, to the resident, to the resident's representative, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under subsection (x) of this Section. (Section 3-421 of the Act)*

- x) *Within ten days following transfer or discharge, the facility or any resident transferred or discharged may send a written request to the Department for a hearing under Section 3-703 of the Act to challenge the transfer or discharge. The Department shall hold the hearing within 30 days of receipt of the request. Where a challenge is by a resident, the hearing shall be held at a location convenient to the resident. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments loss less expenses saved as a result of the transfer or discharge. No resident transferred or discharged may be held liable for the charge for care which would have been made had the resident remained in the facility. If a resident prevails, the resident may file a claim against the State under the Court of Claims Act (Ill. Rev. Stat. 1987, ch. 37, pars. 439.1 et seq.) for any excess expenses directly caused by the order to transfer or discharge. The Department shall assist the resident in returning to the facility if assistance is requested. (Section 3-422 of the Act)*
  
- y) *Any owner of a facility licensed under this Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under subsection (u) of this Section. (A, B) (Section 3-423 of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 300 SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE**  
**SECTION 300.626 DISCHARGE PLANNING FOR IDENTIFIED OFFENDERS**

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**Section 300.626 Discharge Planning for Identified Offenders**

- a) *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 300.3300 of this Part. (Section 2-201.6(g) of the Act)*
- b) All discharges and transfers shall be in accordance with Section 300.3300 of this Part.
- c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.
- d) A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:
  - 1) The facility's inability to meet the needs of the resident, based on Section 300.625 of this Part and subsection (a) of this Section;
  - 2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or
  - 3) The physical safety of the resident, other residents, the facility staff, or facility visitors.
- e) Discharge planning shall be included as part of the plan of care developed in accordance with Section 300.625(k).

(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 300 SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE**  
**SECTION 300.627 TRANSFER OF AN IDENTIFIED OFFENDER**

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**Section 300.627 Transfer of an Identified Offender**

- a) *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 300.3300 of this Part. (Section 2-201.6(g) of the Act)*
- b) All discharges and transfers shall be in accordance with Section 300.3300 of this Part.
- c) When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility shall notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
- d) This notification must include all of the documentation required under Section 300.625 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.
- e) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:
  - 1) *The mittimus and any pre-sentence investigation reports;*
  - 2) *The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*

- 3) *Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*
  - 4) *Reports of disciplinary infractions and dispositions;*
  - 5) *Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*
  - 6) *The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*
- f) The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 31 Ill. Reg. 6044, effective April 3, 2007)

# **Appendix C**

## **PART 295 ASSISTED LIVING AND SHARED HOUSING ESTABLISHMENT CODE SECTION 295.6000 RESIDENT RIGHTS**

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 295 ASSISTED LIVING AND SHARED HOUSING ESTABLISHMENT CODE**  
**SECTION 295.6000 RESIDENT RIGHTS**

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**Section 295.6000 Resident Rights**

- a) *No resident shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of his or her status as a resident of an establishment, nor shall a resident forfeit any of the following rights:*
- 1) The right to live in an environment that promotes and supports each resident's dignity, individuality, independence, self-determination, privacy, and choice and to be treated with consideration and respect;
  - 2) *The right to respect for bodily privacy and dignity at all times, especially during care and treatment;*
  - 3) *The right to retain and use personal property, unless such use infringes on the health, safety, or welfare of other individuals, and a place to store personal items that is locked and secure;*
  - 4) The right to designate any individual to participate with the resident or in the resident's name in the development of the written service plan;
  - 5) The right to receive the services specified in the service plan, to review and renegotiate the service plan at any time; and to be informed of the cost of the changes;
  - 6) The right to direct his or her own care and negotiate the terms of his or her own care;
  - 7) *The right to refuse services unless such services are court ordered or the health, safety, or welfare of other individuals is endangered by the refusal, and to be advised of the consequences of that refusal;*

- 8) The right to exercise free choice in selected activities, schedules, and daily routine;
- 9) The right to exercise free choice in selecting a primary care provider, pharmacy, home health provider, or other service provider and to assume responsibility for any additional costs incurred as a result of such choices. However, an establishment may specify how medications are packaged by a pharmacy if the resident receives administration of medication;
- 10) The right to request to relocate or refuse to relocate within the facility based upon the resident's needs, desires, and availability of such options;
- 11) *The right to the free exercise of religion* and to participate or refuse to participate in religious, social, recreational, rehabilitative, political or community activities;
- 12) *The right to be free of chemical and physical restraints;*
- 13) *The right to be free of abuse or neglect or financial exploitation or to refuse to perform labor;*
- 14) *The right to confidentiality of the resident's medical, financial, or other records.* The release of a record shall be by written consent of the resident or the resident's representative and shall specify the circumstances under which each individual record may be released, except as specified by law;
- 15) The right to privacy in financial and personal affairs;
- 16) *The right of access and the right to review and copy the resident's personal files maintained by the establishment,* during normal business hours or at a time agreed upon by the resident and the establishment;
- 17) *The right to privacy with regard to mail, phone calls, and visitors;*
- 18) *The right to uncensored access to the State Ombudsman or his or her designee,* and the right to refuse access to a State Ombudsman or Department reviewer;
- 19) *The right to be free of retaliation for or constraint from criticizing the establishment or making complaints to appropriate agencies* or any agency or individual;
- 20) *The right to 24 hour access to the establishment* and all common areas of the establishment;

- 21) The right to a minimum of 30-day notice of any change in a fee or charge or the availability of a service;
  - 22) *The right to a minimum of 90-day notice of a planned establishment closure;*
  - 23) *The right to a minimum of 30-day notice of an involuntary residency termination, except where the resident poses a threat to himself or others, or in other emergency situations, and the right to appeal such termination;*
  - 24) *The right to a 30-day notice of delinquency and at least 15 days right to cure delinquency. (Section 95 of the Act)*
- b) *Nothing in this Part is meant to limit a resident's right to choose his or her health care provider. (Section 75(h) of the Act)*

# **Appendix D**

## **PART 340 ILLINOIS VETERANS' HOMES CODE SECTION 340.1470 TRANSFER OR DISCHARGE**

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 340 ILLINOIS VETERANS' HOMES CODE**  
**SECTION 340.1470 TRANSFER OR DISCHARGE**

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**Section 340.1470 Transfer or Discharge**

- a) *A resident may be voluntarily discharged from a facility after he gives the administrator, a physician, or a nurse of the facility written notice of his desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his guardian or if the resident is a minor, his parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)*
- b) *A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:*
- 1) *for medical reasons;*
  - 2) *for the resident's physical safety;*
  - 3) *for the physical safety of other residents, the facility staff or facility visitors;*  
*or*
  - 4) *for either late payment or nonpayment for the resident's stay, except as prohibited by Titles XVIII and XIX of the federal Social Security Act. For purposes of this Section, "Late Payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after submission of a bill, the facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay*

*the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection does not apply to those residents whose care is provided under the Illinois Public Aid Code. (Section 3-401 of the Act)*

- c) *A facility participating in the Medical Assistance Program is prohibited from failing or refusing to retain as a resident any person because the resident is a recipient of, or an applicant for, the Medical Assistance Program. For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling ten days or less following a hospital admission. The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the ten-day period. (Section 3-401.1(a) of the Act)*
  
- d) *Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under Section 3-408 of the Act and subsection (j) of this Section and by a minimum written notice of 21 days. The 21-day requirement shall not apply in any of the following instances:*
  - 1) *When an emergency transfer or discharge is ordered by the resident's attending physician because of the resident's health care needs; (Section 3-402(a) of the Act)*
  
  - 2) *When the transfer or discharge is mandated by the physical safety of other residents, the facility staff, or facility visitors as documented in the clinical record. (Section 3-402(b) of the Act)*
  
- e) *The notice required by Section 3-402 of the Act and subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:*
  - 1) *The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)*
  
  - 2) *The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)*
  
  - 3) *A statement in not less than 12-point type, which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within ten days after receiving this notice. If you request a hearing, it will be held not later than ten days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30*

*days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed below." (Section 3-403(c) of the Act)*

- 4) *A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)*
- 5) *The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)*
- f) *A request for a hearing made under Section 3-403 of the Act and subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)*
- g) *A copy of the notice required by Section 3-402 of the Act and subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Public Aid. (Section 3-405 of the Act)*
- h) *When the basis for an involuntary transfer or discharge is the result of an action by the Department of Public Aid with respect to a recipient of Title XIX and a hearing request is filed with the Department of Public Aid, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Public Aid or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)*
- i) *When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)*
- j) *The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions. This summary shall be made a part of the resident's clinical record. (Section 3-408 of the Act)*

- k) *The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)*
- l) *A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his parent shall have the opportunity to file a request for a hearing with the Department within ten days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)*
- m) *The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than ten days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)*
- n) *The hearing before the Department provided under Section 3-411 of the Act and subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 of the Act. In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge. (Section 3-412 of the Act)*
- o) *If the Department determines that a transfer or discharge is authorized under Section 3-401 of the Act and subsection (b) of this Section, the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under Section 3-402 of the Act and subsection (c) of this Section, or the tenth day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or discharge in less than 21 days as described under Section 3-402 of the Act and subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-413 of the Act)*
- p) *The Department of Public Aid shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by Section 3-402 of the Act and subsection (c) of this Section. (Section 3-414 of the Act)*
- q) *Any owner of a facility licensed under this Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate*

*placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. (Section 3-423 of the Act)*

# **Appendix E**

## **PART 350 INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE**

### **SECTION 350.3300 TRANSFER OR DISCHARGE**

### **SECTION 350.636 DISCHARGE PLANNING FOR IDENTIFIED OFFENDERS**

### **SECTION 350.637 TRANSFER OF AN IDENTIFIED OFFENDER**

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 350 INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED**  
**FACILITIES CODE**  
**SECTION 350.3300 TRANSFER OR DISCHARGE**

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**Section 350.3300 Transfer or Discharge**

- a) *A resident may be voluntarily discharged from a facility after he gives the administrator, a physician, or a nurse of the facility written notice of his desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his guardian or if the resident is a minor, his parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)*
  
- b) Each resident's rights regarding involuntary transfer or discharge from a facility shall be as described in subsections (c) through (y) of this Section.
  
- c) Reasons for Transfer or Discharge
  - 1) *A facility may involuntary transfer or discharge a resident only for one or more of the following reasons:*
    - A) *for medical reasons.*
    - B) *for the resident's physical safety.*
    - C) *for the physical safety of other residents, the facility staff or facility visitors.*
    - D) *for either late payment or nonpayment for the resident's stay, except as prohibited by Title XVIII and XIX of the Federal Social Security Act. For purposes of this Section, "late payment" means non-receipt of payment after submission of a bill. If payment is not received*

*within 45 days after submission of a bill, the facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection does not apply to those residents whose care is provided under the Illinois Public Aid Code. (B) (Section 3-401 of the Act)*

2) Prohibition of Discrimination

- A) *A facility participating in the medical assistance program is prohibited from failing or refusing to retain as a resident any person because the resident is a recipient of or an applicant for the medical assistance program. For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling ten days or less following a hospital admission. The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the ten-day period. (Section 3-401.1(a) of the Act)*
- B) *A facility which violates subsection (c)(2)(A) of this Section shall be guilty of a business offense and fined not less than \$500 nor more than \$1,000 for the first offense and not less than \$1,000 nor more than \$5,000 for each subsequent offense. (Section 3-401.1(b) of the Act)*

d) *Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under subsection (j) of this Section and by a minimum written notice of 21 days. The 21-day requirement shall not apply in any of the following instances:*

- 1) *When an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician; (Section 3-402(a) of the Act)*
- 2) *When the transfer or discharge is mandated by the physical safety of other residents as documented in the clinical record. (Section 3-402(b) of the Act)*

- e) *The notice required by subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:*
- 1) *The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)*
  - 2) *The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)*
  - 3) *A statement in not less than 12-point type, which reads:*  
  
*"You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within ten days after receiving this notice. If you request a hearing, it will be held not later than ten days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed below," (Section 3-403(c) of the Act)*
  - 4) *A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)*
  - 5) *The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)*
- f) *A request for a hearing made under subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)*
- g) *A copy of the notice required by subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident, the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Public Aid. (Section 3-405 of the Act)*
- h) *When the basis for an involuntary transfer or discharge is the result of an action by the Department of Public Aid with respect to a recipient of Title XIX and a hearing*

*request is filed with the Department of Public Aid, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Public Aid or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)*

- i) *When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)*
- j) *The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's clinical record. (Section 3-408 of the Act)*
- k) *The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)*
- l) *A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his parent shall have the opportunity to file a request for a hearing with the Department within ten days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)*
- m) *The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than ten days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)*
- n) *The hearing before the Department provided under subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 of the Act. In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge. (Section 3-412 of the Act)*
- o) *If the Department determines that a transfer or discharge is authorized under subsection (c) of this Section, the resident shall not be required to leave the facility before the 34<sup>th</sup> day following receipt of the notice required under subsection (d) of this Section, or the tenth day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or*

*discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (B) (Section 3-413 of the Act)*

- p) *The Department of Public Aid shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by subsection (c) of this Section. (Section 3-414 of the Act)*
- q) *The Department may transfer or discharge any resident from any facility required to be licensed under this Act when any of the following conditions exist:*
  - 1) *Such facility is operating without a license; (Section 3-415(a) of the Act)*
  - 2) *The Department has suspended, revoked or refused to renew the license of the facility as provided under Section 3-119 of the Act. (Section 3-415(b) of the Act)*
  - 3) *The facility has requested the aid of the Department in the transfer or discharge of the resident and the Department finds that the resident consents to transfer or discharge; (Section 3-415(c) of the Act)*
  - 4) *The facility is closing or intends to close and adequate arrangement for relocation of the resident has not been made at least 30 days prior to closure; or (Section 3-415(d) of the Act)*
  - 5) *The Department determines that an emergency exists which requires immediate transfer or discharge of the resident. (Section 3-415(e) of the Act)*
- r) *In deciding to transfer or discharge a resident from a facility under subsection (q) of this Section, the Department shall consider the likelihood of serious harm which may result if the resident remains in the facility. (Section 3-416 of the Act)*
- s) *The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under subsections (c) through (q) of this Section including information on available alternative placements. Residents shall be involved in planning the transfer or discharge and shall choose among the available alternative placements, except that where an emergency makes prior resident involvement impossible, the Department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement. Where the Department makes or participates in making the relocation decision, consideration shall be given to proximity to the resident's relatives and friends. The resident shall be allowed three visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate transfer or*

*discharge requires reduction in the number of visits. (Section 3-417 of the Act)*

- t) *The Department shall prepare resident transfer or discharge plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergencies and where possible in emergencies, the Department shall design and implement such plans in advance of transfer or discharge. (Section 3-418 of the Act)*
- u) *The Department may place relocation teams in any facility from which residents are being discharged or transferred for any reason, for the purpose of implementing transfer or discharge plans. (Section 3-419 of the Act)*
- v) *In any transfer or discharge conducted under subsections (q) through (t) of this Section the Department shall:*
  - 1) *Provide written notice to the facility prior to the transfer or discharge. The notice shall state the basis for the order of transfer or discharge and shall inform the facility of its right to an informal conference prior to transfer or discharge under this Section, and its right to a subsequent hearing under subsection (x) of this Section. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within four working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within four working days from the receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the Department may affirm, modify or overrule its previous decision. Except in an emergency, transfer or discharge may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held; and (Section 3-420(a) of the Act)*
  - 2) *Provide written notice to any resident to be removed, to the resident's representative, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which transfer or discharge is ordered and shall inform the resident of the resident's right to challenge the transfer or discharge under subsection (x) of this Section. The Department shall hold an informal conference with the resident or the resident's representative prior to transfer or discharge at which the resident or the representative may present any objections to the proposed transfer or discharge plan or alternative placement. (Section 3-420(b) of the Act)*
- w) *In any transfer or discharge conducted under subsection (q)(5) of this Section, the Department shall notify the facility and any resident to be removed that an emergency has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the*

*Department shall provide written notice to the facility, to the resident, to the resident's representative, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under subsection (x) of this Section. (Section 3-421 of the Act)*

- x) *Within ten days following transfer or discharge, the facility or any resident transferred or discharged may send a written request to the Department for a hearing under Section 3-703 of the Act to challenge the transfer or discharge. The Department shall hold the hearing within 30 days of receipt of the request. Where a challenge is by a resident, the hearing shall be held at a location convenient to the resident. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments loss less expenses saved as a result of the transfer or discharge. No resident transferred or discharged may be held liable for the charge for care which would have been made had the resident remained in the facility. If a resident prevails, the resident may file a claim against the State under the Court of Claims Act (Ill. Rev. Stat. 1987, ch. 37, pars. 439.1 et seq.) for any excess expenses directly caused by the order to transfer or discharge. The Department shall assist the resident in returning to the facility if assistance is requested. (Section 3-422 of the Act)*
  
- y) *Any owner of a facility licensed under this Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under subsection (u) of this Section. (A, B) (Section 3-423 of the Act)*

(Source: Amended at 13 Ill. Reg. 6040, effective April 17, 1989)

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 350 INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED**  
**FACILITIES CODE**  
**SECTION 350.636 DISCHARGE PLANNING FOR IDENTIFIED OFFENDERS**

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**Section 350.636 Discharge Planning for Identified Offenders**

- a) *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 350.3300 of this Part. (Section 2-201.6(g) of the Act)*
- b) All discharges and transfers shall be in accordance with Section 350.3300 of this Part.
- c) When a resident who is an identified offender is discharged, the discharging facility shall notify the Department.
- d) A facility that admits or retains an identified offender shall have in place policies and procedures for the discharge of an identified offender for reasons related to the individual's status as an identified offender, including, but not limited to:
  - 1) The facility's inability to meet the needs of the resident, based on Section 350.635 of this Part and subsection (a) of this Section;
  - 2) The facility's inability to provide the security measures necessary to protect facility residents, staff and visitors; or
  - 3) The physical safety of the resident, other residents, the facility staff, or facility visitors.
- e) Discharge planning shall be included as part of the plan of care developed in accordance with Section 350.635(k).

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 77: PUBLIC HEALTH**  
**CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**  
**SUBCHAPTER c: LONG-TERM CARE FACILITIES**  
**PART 350 INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED**  
**FACILITIES CODE**  
**SECTION 350.637 TRANSFER OF AN IDENTIFIED OFFENDER**

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**Section 350.637 Transfer of an Identified Offender**

- a) *If, based on the security measures listed in the Criminal History Analysis Report, a facility determines that it cannot manage the identified offender resident safely within the facility, it shall commence involuntary transfer or discharge proceedings pursuant to Section 3-402 of the Act and Section 350.3300 of this Part. (Section 2-201.6(g) of the Act)*
- b) All discharges and transfers shall be in accordance with Section 350.3300 of this Part.
- c) When a resident who is an identified offender is transferred to another facility regulated by the Department, the Department of Healthcare and Family Services, or the Department of Human Services, the transferring facility must notify the Department and the receiving facility that the individual is an identified offender before making the transfer.
- d) This notification must include all of the documentation required under Section 350.635 of this Part and subsection (a) of this Section, and the transferring facility must provide this information to the receiving facility to complete the discharge planning.
- e) If the following information has been provided to the transferring facility from the Department of Corrections, the transferring facility shall provide copies to the receiving facility before making the transfer:
  - 1) *The mittimus and any pre-sentence investigation reports;*
  - 2) *The social evaluation prepared pursuant to Section 3-8-2 of the Unified Code of Corrections [730 ILCS 5/3-8-2];*

- 3) *Any pre-release evaluation conducted pursuant to subsection (j) of Section 3-6-2 of the Unified Code of Corrections [730 ILCS 5/3-6-2];*
  - 4) *Reports of disciplinary infractions and dispositions;*
  - 5) *Any parole plan, including orders issued by the Illinois Prisoner Review Board and any violation reports and dispositions; and*
  - 6) *The name and contact information for the assigned parole agent and parole supervisor. (Section 3-14-1 of the Unified Code of Corrections)*
- f) The information required by this Section shall be provided upon transfer. Information compiled concerning an identified offender must not be further disseminated except to the resident; the resident's legal representative; law enforcement agencies; the resident's parole or probation officer; the Division of Long Term Care Field Operations in the Department's Office of Health Care Regulation; other facilities licensed by the Department, the Illinois Department of Healthcare and Family Services, or the Illinois Department of Human Services that are or will be providing care to the resident, or are considering whether to do so; health care and social service providers licensed by the Illinois Department of Financial and Professional Regulation who are or will be providing care to the resident, or are considering whether to do so; health care facilities and providers in other states that are licensed and/or regulated in their home state and would be authorized to receive this information if they were in Illinois.

(Source: Amended at 31 Ill. Reg. 6119, effective April 3, 2007)

# APPENDIX F

HFS 89 ILLINOIS ADMINISTRATIVE CODE Chapter 1, Section  
146.255 Subchapter d **Section 146.255 Discharge**

HFS 89 ILLINOIS ADMINISTRATIVE CODE Chapter 1, Section 146.255 Subchapter d **Section 146.255 Discharge**

a) If a resident does not meet the terms for occupancy as stated in the resident contract, the SLF shall not commence involuntary discharge until the SLF has discussed the reasons for involuntary discharge with the resident and his or her designated representative. Documentation of the discussion shall be placed in the resident's record.

b) The SLF shall provide a resident with a 30-day written notice of proposed involuntary discharge unless such a delay might jeopardize the health, safety, and well-being of the resident or others. A copy of the notice required by this subsection (b) shall be placed in the resident's record and a copy shall be transmitted to the resident and the resident's designated representative. The notice shall be on a form prescribed by the Department and shall contain all of the following:

1) The stated reason for the proposed discharge;

2) The effective date of the proposed discharge;

3) A statement in not less than 14-point type that reads: "You have a right to appeal the SLF's decision to discharge you. You may file a request for a hearing with the Department within ten days after receiving this notice. If you request a hearing, you will not be discharged during that time unless you are unsafe to yourself or others and the SLF has given you a notice for an emergency discharge. If the SLF has not given you a notice for an emergency discharge, and if the decision following the hearing is not in your favor, you will not be discharged prior to the tenth day after receipt of the Department's hearing decision unless you are unsafe to yourself or others. If the SLF provided you with a notice of emergency discharge, and the decision following the hearing is in your favor, you will be entitled to readmission to the SLF upon the first available apartment. A form to appeal the SLF's decision and to request a hearing is attached. If you have any questions, call the Department at the telephone number listed below.";

4) A hearing request form, together with a postage paid, preaddressed envelope to the Department; and

5) The name, address, and telephone number of the person charged with the responsibility of supervising the discharge.

c) The SLF shall prepare plans to ensure safe and orderly involuntary discharge and protect resident health, safety, welfare and rights. HFS 89 ILLINOIS ADMINISTRATIVE CODE Chapter 1, Section 146.255 Subchapter d

- d) A resident may be involuntarily discharged only if one or more of the following occurs:
- 1) He or she poses an immediate threat to self or others.
  - 2) He or she needs mental health services to prevent harm to self or others.
  - 3) He or she has breached the conditions of the resident contract.
  - 4) The SLF has had its certification terminated, suspended, not renewed, or has voluntarily surrendered its certification.
  - 5) The SLF cannot meet the resident's needs with available support services.
  - 6) The resident has received proper notice of failure to pay from the SLF. The resident shall have the right to make full payment up to the date that the discharge is to be made and then shall have the right to remain in the SLF. This subsection (d)(6) does not apply to Medicaid-eligible residents when the failure to pay relates to the Medicaid payment.
  - 7) The resident exceeds the SLF's policy for what constitutes a temporary absence from the SLF. A temporary absence shall not be considered a basis for an involuntary discharge of a Medicaid-eligible resident until the Department has stopped payment pursuant to Section 146.225(f).
- e) The 30-day notice required under subsection (b) of this Section shall not apply in either of the following instances; however, a notice and right to appeal information must still be provided when an immediate discharge is required:
- 1) When an emergency discharge is mandated by the resident's health care or mental health needs as documented in the resident record. The SLF may consult with the attending physician for additional support on the emergency discharge.
  - 2) When the discharge is mandated to ensure the physical safety of the resident and other residents as documented in the resident record.
- f) If the resident submits a request for hearing under subsection (b) of this Section, the involuntary discharge shall be stayed pending a hearing or appeal of the decision, unless the discharge is a result of a condition allowing a discharge in less than 30 days as described under subsections (e)(1) and (2) of this Section.
- g) In determining whether an involuntary discharge is justified, the burden of proof HFS 89
- ILLINOIS ADMINISTRATIVE CODE Chapter 1, Section 146.255 Subchapter d

in the hearing rests with the entity requesting the discharge.

h) If the Department determines that an involuntary discharge is justified under subsection (d) of this Section, the resident shall not be required to leave the SLF before the tenth day after receipt of the Department's hearing decision unless a condition which would have allowed discharge as described under subsections (e)(1) and (2) of this Section develops in the interim.

i) The SLF shall offer relocation assistance to residents involuntarily discharged under this Section, including information on available alternative placements. A resident or his or her designated representative shall be involved in planning the discharge and shall choose among the available alternative placements. Where an emergency makes prior resident involvement impossible, the SLF may arrange for a temporary placement until a final placement can be arranged. The SLF may offer assistance in relocating from a temporary to a final placement.

j) When a resident discharges on a voluntary basis, he or she shall provide the SLF with 30 days written notice of intent to discharge, except where a delay would jeopardize the health, safety, and well-being of the resident or others.

k) The Department may discharge any resident from an SLF when any of the following conditions exist:

1) The Department has terminated or suspended the SLF certification.

2) The SLF is closing or surrendering its certification and arrangement for relocation of the resident has not been made at least 30 days prior to closure or surrender.

3) The Department determines that an emergency exists which requires immediate discharge of the resident.

l) In cases of discharge under subsection (d) or (k) of this Section, the resident is no longer bound by the resident contract.

(Source: Amended at 33 Ill. Reg. 11803, effective August 1, 2009)

# **Appendix G**

## **Notice of Involuntary Transfer or Discharge and Opportunity for Hearing**



## Notice of Involuntary Transfer or Discharge and Opportunity for Hearing

### FACILITY INFORMATION

Name \_\_\_\_\_ Address \_\_\_\_\_  
County \_\_\_\_\_ Telephone Number \_\_\_\_\_ Date of Notice to Resident \_\_\_\_\_

### RESIDENT INFORMATION

Name \_\_\_\_\_ Representative \_\_\_\_\_  
Representative's Address \_\_\_\_\_ Representative's Telephone Number \_\_\_\_\_

**FEDERAL PROCEEDING**       **STATE PROCEEDING**

**FEDERAL PROCEEDING.** This facility admits private-pay and Medicare or Medicaid residents and is federally-certified and state licensed, or this facility admits only Medicare or Medicaid residents and is federally funded. **This facility seeks to transfer or discharge you** pursuant to the regulations of the Health Care Financing Administration for states and long-term care facilities, 42 CFR 483.12 ("federal regulations"). As recorded in your clinical record in accordance with Section 483.12 (a)(4) of the federal regulations, the reason for this proposed transfer or discharge is:

- your welfare and needs cannot be met in this facility, as documented in your clinical record by your physician, 483.12 (a)(2)(i);
- your health has improved sufficiently so you no longer need the services provided by this facility, as documented by your physician in your clinical record, 483.12(a)(2)(ii);
- the safety of individuals in this facility is endangered, 483.12(a)(2)(iii);
- the health of individuals in the facility would otherwise be endangered, as documented by a physician in your clinical record, 483.12(a)(2)(iv);
- you have failed, after reasonable and appropriate notice, to pay for your stay at this facility, 483.12(a)(2)(v); or
- this facility ceases to operate, 483.12(a)(2)(vi).

**On the date of transfer or discharge, you will be relocated to:**

**Facility/Person** \_\_\_\_\_  
**Address** \_\_\_\_\_  
**Telephone** \_\_\_\_\_

Pursuant to Section 483.12(a)(7) of the federal regulations, this facility will provide sufficient preparation and orientation to ensure your safe and orderly transfer or discharge from this facility.



## Notice of Involuntary Transfer or Discharge and Opportunity for Hearing

**STATE PROCEEDING.** This facility admits only private-pay residents and is state-licensed. **This facility seeks to transfer or discharge you** pursuant to the Nursing Home Care Act, 210 ILCS 45/1-101, *et seq.*, ("state law"). You will be responsible for securing shelter and health care for yourself. You may seek relocation assistance from the Illinois Department of Public Health, including information on alternative placements.

As discussed with \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and as documented in your clinical record pursuant to Section 3-408 of the state law, the reason for this proposed transfer or discharge is:

- medical reasons, 210 ILCS 45/3-401(a);
- your physical safety, 210 ILCS 45/3-401(b);
- the physical safety of other residents, the facility's staff or visitors, 210 ILCS 45/3-401(c); or
- late payment or nonpayment for your stay, 210 ILCS 45/3-401(d).

The responsible party, \_\_\_\_\_, has the right to pay the amount of the bill in full up to the the date the transfer or discharge is to be made and then you shall have the right to remain in this facility.

To obtain the name of a local representative of the Illinois Long-term Care Ombudsman Program in your community, you may call the Illinois Department on Aging, Senior Helpline, toll-free at **800-252-8966** or write to the Illinois Department on Aging, 421 E. Capital Ave., Springfield, IL 62701.

The agency responsible for the protection and advocacy of the developmentally disabled or mentally ill individuals is Equip for Equality, Inc.:

20 N. Michigan Ave., Suite 300, Chicago, IL 60602, 312-341-0022, (Voice) 800-537-2632, (TTY) 800-610-2779,  
(Fax) 312-341-0295

1617 Second Ave., Suite 210, P.O. Box 3753, Rock Island, IL 61204, 309-786-6868, (Voice) 800-758-6869, (TTY)  
800-610-2779, (Fax) 309-786-2393

235 S. Fifth St., P.O. Box 276, Springfield, IL 62705, 217-544-0464, (Voice) 800-758-0464, (TTY) 800-610-2779, (Fax)  
217-523-0720

The effective date of the proposed transfer or discharge is \_\_\_\_\_, 20\_\_\_\_. The person who will supervise your transfer or discharge is:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

### APPEAL RIGHTS

Regardless of whether the facility's proposed action is under federal regulations or state law, **you have the right to appeal the decision to transfer or discharge you.**

If you think you should not have to leave this facility, you may file a Request for a Hearing with the Illinois Department of Public Health within 10 days after receiving this notice.



## Notice of Involuntary Transfer or Discharge and Opportunity for Hearing

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If you request a hearing, it will be held not later than 10 days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original Notice of Transfer or Discharge.

A form to appeal the facility's decision is attached. If you have questions, call the Illinois Department of Public Health at 217-782-4977. Your call will be directed to the appropriate individual.

A copy of this notice was placed in your clinical record and a copy was transmitted to the Illinois Department of Public Health, to you, to the long-term care ombudsman, to your representative or a family member, and, if your care is paid for, in whole or in part, through Title XIX, to the Illinois Department of Healthcare and Family Services on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of facility's agent \_\_\_\_\_

Title of agent \_\_\_\_\_

Date \_\_\_\_\_

Name of facility attorney \_\_\_\_\_

Attorney address \_\_\_\_\_

Attorney phone number \_\_\_\_\_