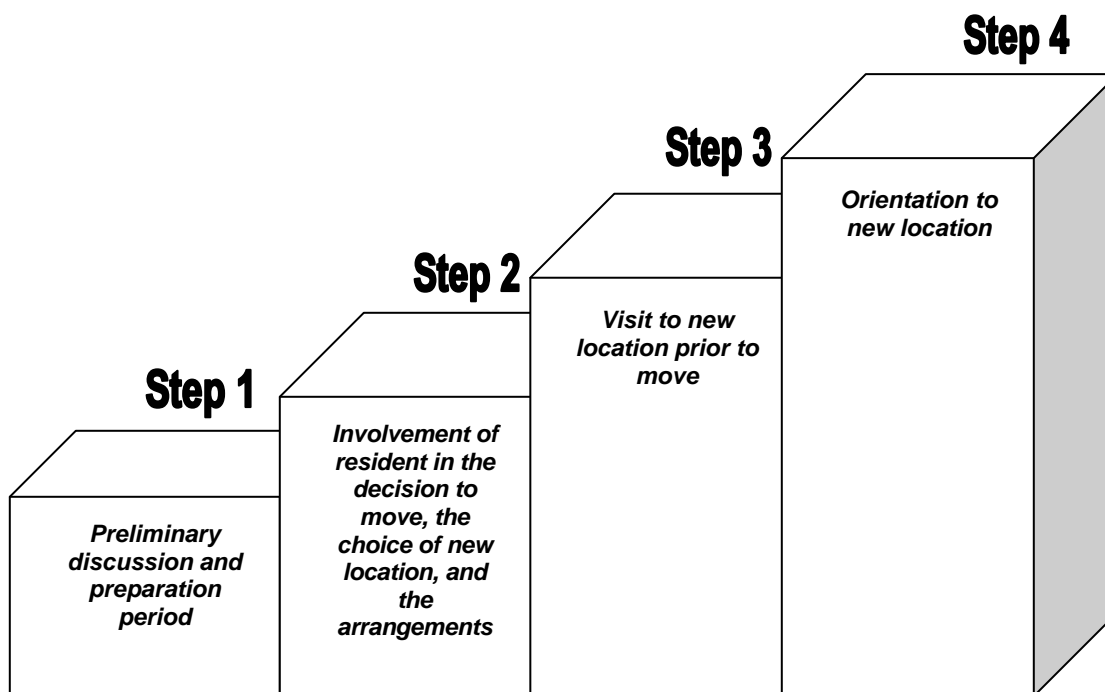


Protection Related to Transfer/Discharge

Residents come to view the nursing home and even their room in the facility as their own home. Moving out of the facility can be traumatic for the resident. In one landmark case, a New York State court ruled that a resident should not be made to go because the damage to her health would be greater if she were moved against her will than it would be if she remained in the facility with a lower level of service.

To minimize transfer trauma, residents need to be involved in decisions surrounding the relocation and be given time to adapt to the change. Studies of transfer have identified important steps that can be taken to mitigate the negative impact of relocation. The steps include:



Reasons for Transfer/Discharge from a Facility

The Nursing Home Reform Law and federal regulations specify **permissible reasons for transfer** and establish protections such as advance notice, the right to appeal a transfer, and the right to return to the nursing home if appropriate. [§483.12] Some of these protections are outlined below.

Nursing homes must not transfer or discharge a resident unless the:

- facility is unable to meet the resident's medical needs;
- resident's health has improved such that he/she no longer needs nursing home care;
- safety of other individuals is endangered;
- health of other individuals would be endangered;
- resident has failed, after reasonable notice, to pay for his/her stay in the facility; or

- the facility ceases to operate.

A resident's refusal of treatment is not a reason for transfer unless the facility is unable to meet the needs of the resident or protect the health and safety of others.¹

Notice to Residents and Their Representatives before Transfer/Discharge from a Facility

Timing

The notice must be given at least 30 days in advance with these **exceptions**:

- The health or safety of individuals in the facility would be endangered;
- The resident's health has improved such that he/she no longer needs nursing home care;
- An immediate transfer/discharge is required by the resident's urgent medical needs; or
- A resident has not resided in the facility for 30 days.

Content

The notice of discharge or transfer must include:

- the reasons for transfer;
- the effective date of transfer;
- the location to which the resident is to be transferred or discharged;
- the resident's right to appeal the transfer;
- the name and address of the State Long-Term Care Ombudsman; and
- the address and telephone number of Protection and Advocacy Services if the resident has a mental illness or a developmental disability.

Individuals Who Receive Notice

The notice must go to:

- the resident;
- a family member if known;
- the resident's legal representative and legal guardian, if known; and
- the regional office of the division of mental health for residents who are developmentally disabled.

In some states, notice must be given to the State or Local Long-Term Care Ombudsman.

¹ *Guidance to Surveyors, State Operations Manual*. Centers for Medicare & Medicaid Services, Baltimore MD, 06-95. PP.32-40.

Orientation before Transfer/Discharge from a Facility [§483.12 (7)]

A facility must prepare and orient residents to ensure a safe and orderly transfer from the facility. The *Guidance to Surveyors* states that:

“Sufficient preparation” means the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation. The facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence. Some examples of orientation may include trial visits, if possible, by the resident to a new location; working with family to ask their assistance in assuring the resident that valued possessions are not left behind or lost; orienting staff in the receiving facility to resident’s daily patterns; and reviewing with staff routines for handling transfers and discharges in a manner that minimizes unnecessary and avoidable anxiety or depression and recognizes characteristic resident reactions identified by the resident assessment and care plan.

Refusal of Certain Transfers [§483.10 (o)]

Transfer to a portion of the facility (a distinct part) with a separate certification under Medicare or Medicaid is considered transfer to another facility and entitles a resident to all the protections (notice and appeal rights) of such a transfer.

Residents have the right to refuse a transfer to another room within the facility if the purpose of the transfer is to relocate the resident from a part of the facility that is a skilled nursing facility to a part to the facility that is not skilled, or vice versa. However, there may be financial consequences attached to the decision.

Good Provider Practice Before Deciding to Transfer or Discharge

Often the basis for a transfer or discharge can be eliminated by close attention to medical problems, changes in the environment, or alterations in the staff interventions. If the transfer or discharge is due to a significant change in the resident’s condition, “then prior to any action, the facility must conduct the appropriate assessment unless the change is an emergency requiring an immediate transfer.” *Guidance to Surveyors* at F-201, F-287.

Notice Before Change in Room or Roommate

Transfer from one room to another can be traumatic. In 1990, the Nursing Home Reform Law was amended to give residents the right to refuse to be transferred from a Medicare/Medicaid bed to a Medicaid only bed. This amendment was adopted in order to address the problem of transfer trauma from frequent room transfers based not on care needs but on reimbursement rates. The law now provides that the resident has:

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility [i.e., Medicare certified] to a portion of the facility that is not such a skilled nursing facility. 42 USC 1395i-3(c)(1)(A)(x)

There are other provisions regarding intra-facility transfer from a Medicare bed. If you encounter an issue with this type of transfer, read the exact language in the law and

requirements and talk with an experienced ombudsman or with your State Long-Term Care Ombudsman.

Nursing homes move residents around regularly in order to respond to their care needs or those of other residents. Residents have very little opportunity to participate in a decision to move, nor do they often have their choice of where to move or of whom their roommate will be. Only a few states protect residents in cases of intra-facility transfer.

There is no specific federal guidance to facilities regarding the process, timing, or content of a notice before there is a change in room or roommate. Unfortunately, residents cannot appeal intra-facility transfers. They do, however, have the right to file a grievance with the facility. Also, ombudsmen have sometimes been successful in arguing that the move would be or has been detrimental to the resident's health or well being.

Notice of Bed-Hold Policy and Readmission [§483.12 (b)]

- Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to a family member that specifies the duration of the bed-hold policy under the State plan and the facility policies regarding bed-hold. Notice must be given at the time of the transfer.

The facility must also allow a Medicaid recipient to be readmitted to the first available bed in a semi-private room. This provision might affect the decision to hold a bed.