

September 27, 2023

## **The Office of the DC Long-Term Care Ombudsman (ODCLTCO) Review of Discharge, Transfer, and Relocation Notices 2023**

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### **Introduction**

This report presents the results of a review conducted by the Office of the District of Columbia Long-Term Care Ombudsman (“ODCLTCO”) of the discharge, transfer, and relocation notices received from nursing homes (“facilities”) over a two-month period from June 19, 2023 through August 18, 2023. Federal and state regulations allow facilities to initiate discharges and transfers of residents only in specific, limited instances. Despite these protections, improper discharge, transfer and relocation notices, which violate federal and state regulations, continue to be one of the most frequent problems handled by the ODCLTCO.

This annual review is conducted in order to identify trends in notice deficiencies and is shared in hopes of mitigating future facility-initiated discharges and transfers that violate the law. Discharge, transfer, and relocation notices, which violate state and federal regulations, are of great concern for the ODCLTCO because in some cases they can be unsafe and/or traumatic for residents and their families.

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## Notice Requirements

The District enacted the Nursing Home and Community Residence Facility Residents' Protections Act of 1985 (D.C. Law § 6-108; D.C. Official Code § 44-1003.01 *et seq.*) to protect long-term care residents by providing a clear process for facilities to initiate discharges, transfers, and relocations.

Furthermore, Part 483.15(c) (3) (i) of Title 42 of the Federal Regulations requires that before a facility moves a resident, the facility must “notify the resident and the resident’s representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand....” The facility must also “...send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.” Sending notices to ODCLTCO ensures the Ombudsman is aware of facility practices related to transfers and discharges, providing added protection to residents.

***A valid discharge, transfer, or relocation notice must meet the following criteria:***

- be filled out properly and in its entirety;
- be given to the resident, resident’s representative, and the ODCLTCO in a timely fashion (to honor appeal timeline requirements, within seven days of a discharge or transfer and five days of a relocation);
- state the reason for the transfer, discharge or relocation;
- state the effective date of the transfer, discharge or relocation;
- state the specific location to which the resident will be moved;
- include the resident’s right to appeal AND the hearing request form;
- include the name of the person supervising the move; and
- include contact information for the ODCLTCO.

***In addition to the above, a valid transfer notice must:***

- state the number of bed hold days the resident is entitled to; and

- include a bed hold policy form describing resident’s entitlement to an 18-day bed hold and the process followed in the event that a resident has used all of their annual 18 bed hold days.
- ODCLTCO prefers that facilities state “0” if a resident is eligible for bed hold days but has used them all. If writing “N/A,” a facility should give the reason why the resident is ineligible for bed hold days.

## Project Overview and Data

During the period of June 19, 2023 through August 18, 2023, the ODCLTCO conducted a review of all discharge, transfer, and relocation notices received from nursing facilities located in Washington, DC. **Of the 17<sup>1</sup> nursing homes in the District, the ODCLTCO received 316 notices during the review period.**

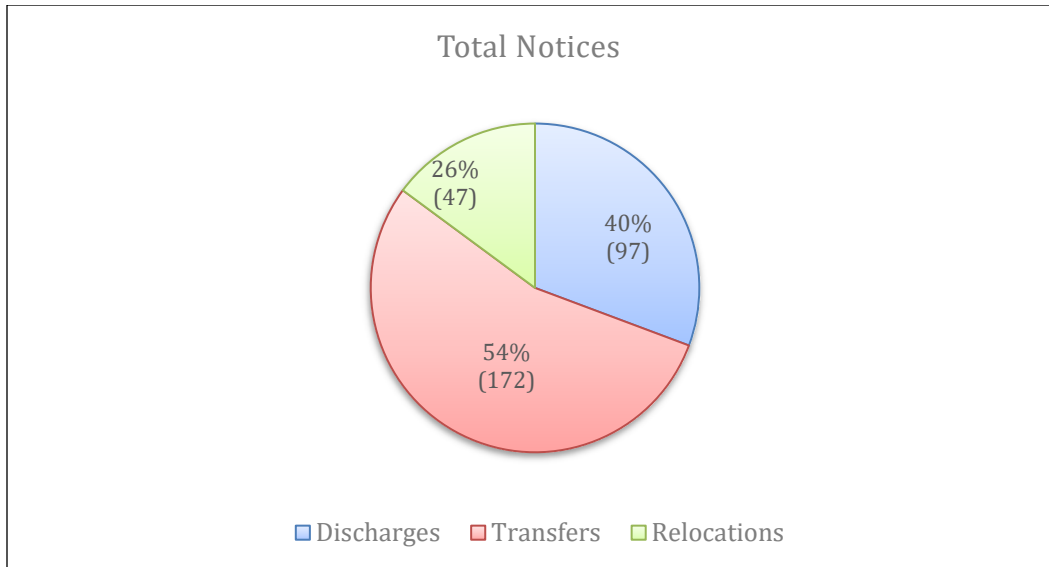
The following facilities **did not submit** any discharge, transfer, or relocation notices to the ODCLTCO during the review period:

- Ingleside Presbyterian (second summer in a row)
- Unique Residential (second summer in a row)

**During the review period, the ODCLTCO received a total of 316 discharge, transfer, or relocation notices.** Ninety-seven (97) of these were discharge notices, one hundred seventy-two (172) were transfer notices, and forty-seven (47) were relocation notices. The following chart provides a breakdown of the 316 notices reviewed.

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<sup>1</sup> For this review, the HSC Pediatric Center was not included.

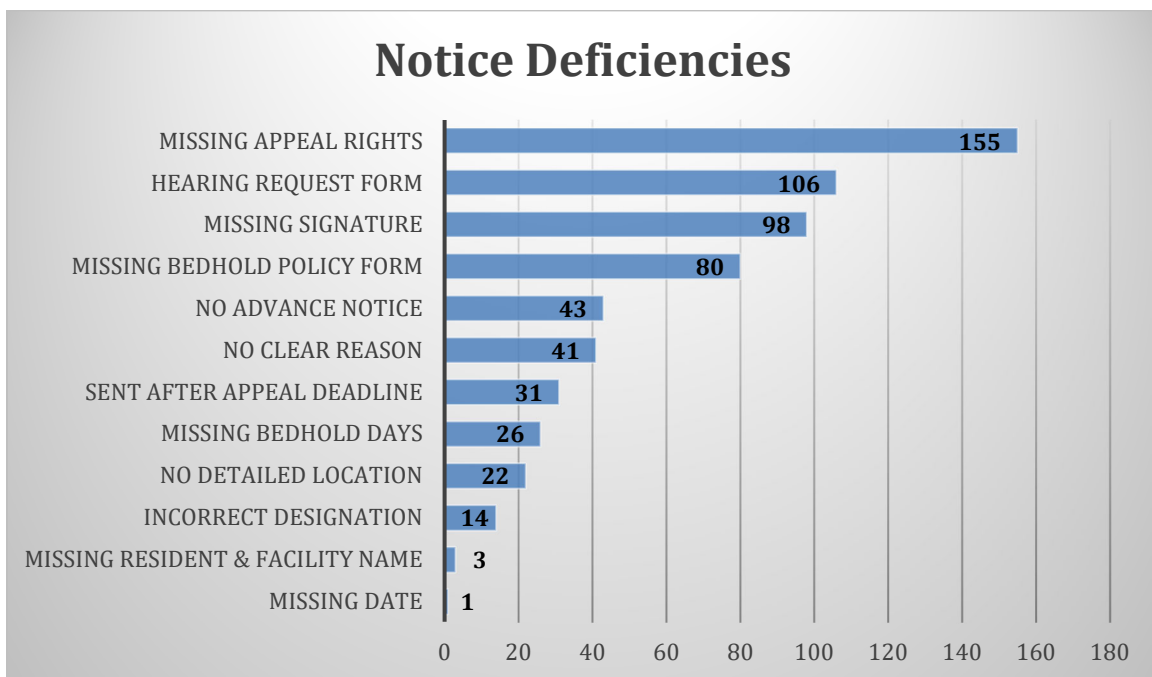


Each notice received by the ODCLTCO was reviewed for **12 potential legal deficiencies** including:

1. Missing a signature or other confirmation that the resident or resident's representative received the notice.
2. No hearing request form attached to the notice.
3. No appeal rights attached to the notice.
4. No bed hold policy form attached to the notice (for transfers only).
5. Resident's number of bed hold policy days remaining not listed (for transfers only).
6. Notice was sent after the resident's deadline to appeal the discharge, transfer, or relocation (7 days for discharges and transfers and 5 days for relocations).
7. The resident was not provided with advance notice (for discharges and relocations only, as we understand many transfers are emergency situations where advance notice cannot be provided).
8. No clear reason was specified for the discharge, transfer, or relocation.
9. Incorrect designation of the type of notice.
10. No detailed location where the resident will be discharged, transferred, or relocated to.

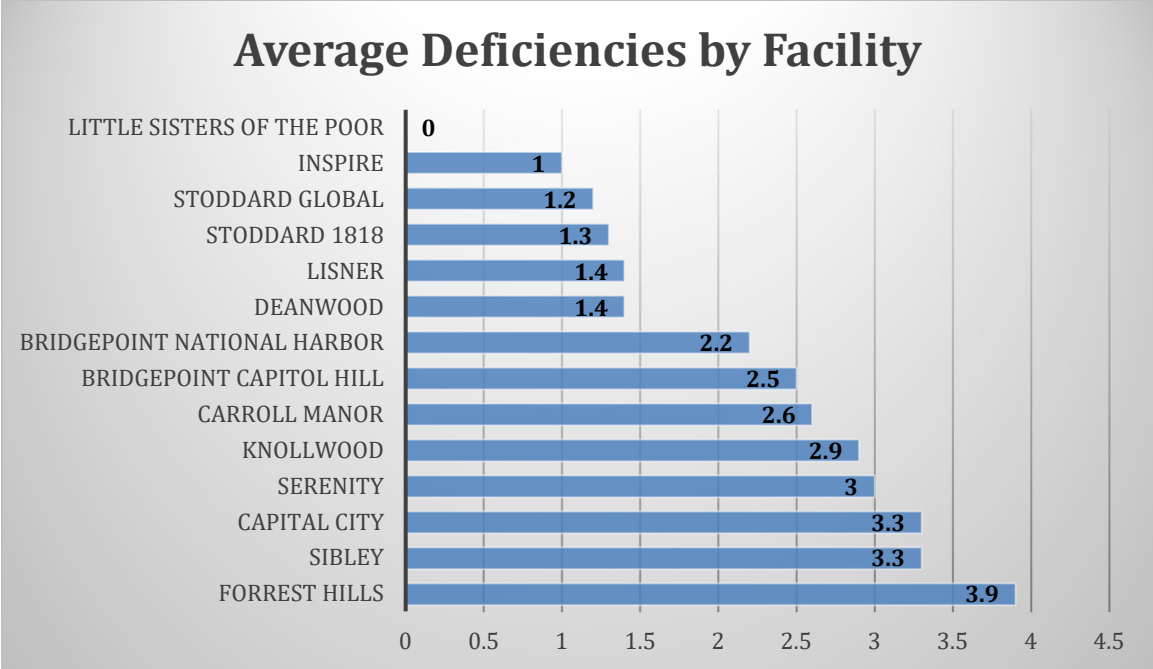
- 11. Missing the date of discharge, transfer, or relocation.
- 12. Missing the resident’s or the facility’s name.

**Of the 316 notices reviewed, 620 deficiencies were identified.** The three most common deficiencies were lack of confirmation that the resident or a representative received the notice; missing hearing request forms; and missing appeal rights. **These were the same most frequent deficiencies from the 2021 and 2022 review.** The chart below summarizes these deficiencies by type.



Little Sisters of the Poor had the fewest deficiencies, with zero (0) deficiencies on their notices. The average number of deficiencies per each notice submitted for each nursing facility in D.C. are available in the chart below.<sup>2</sup>

<sup>2</sup> Note: Stoddard Baptist Global also goes by the name Washington Center for Aging Services. For clarity, the name “Stoddard Baptist Global” is used throughout this report.

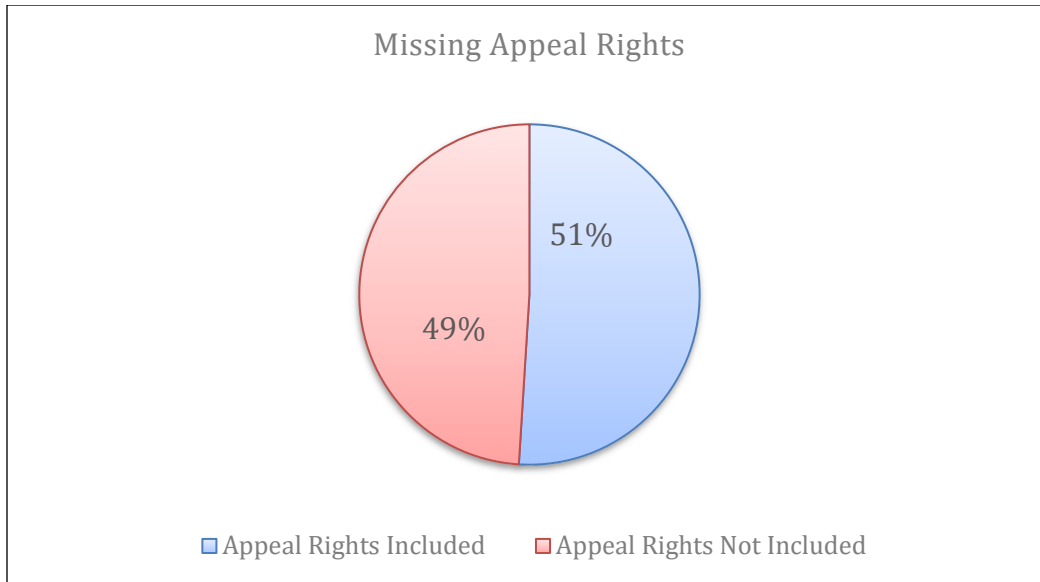


## Common Deficiencies

### *Missing Appeal Rights*

**Out of the 316 notices reviewed, 49% (155) were missing a statement informing residents of their rights to appeal a discharge, transfer, or relocation notice.**

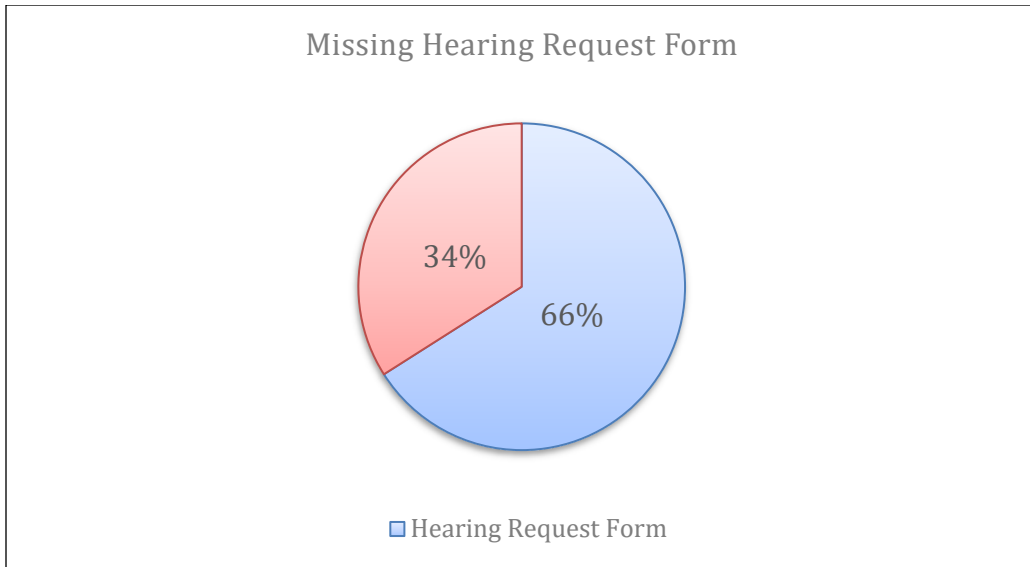
Appeals rights statements are essential to facilitating a safe transition.



***Missing Hearing Request Form***

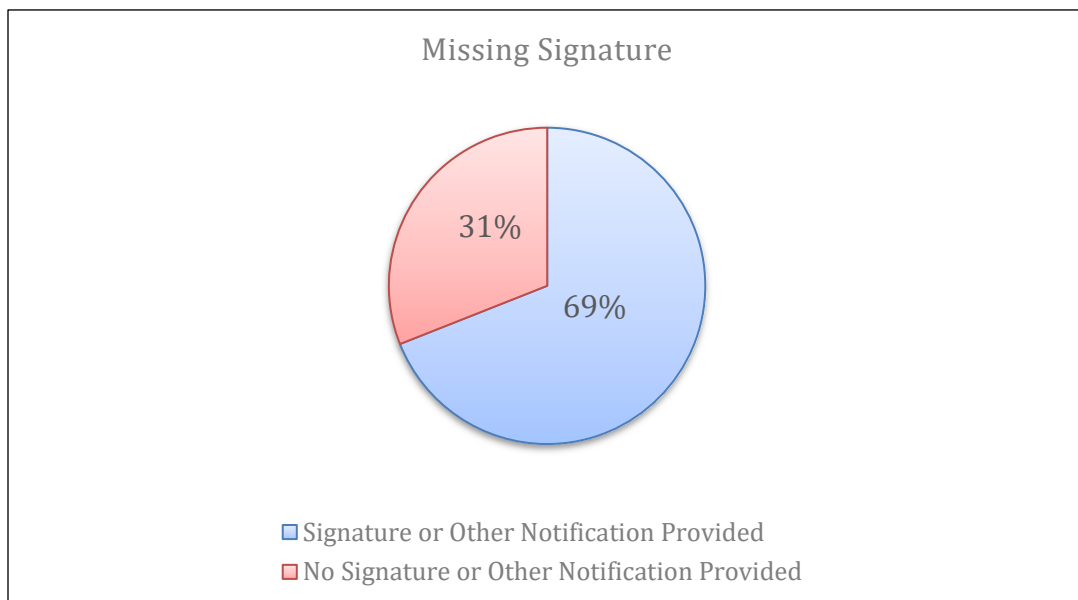
**Of the 316 notices received, 34% (106) did not include a hearing request form as required by law.**

Failing to include a hearing request form is a legal violation that infringes upon a resident’s right to appeal a discharge, transfer, or relocation notice. A notice that does not contain a hearing request form as required by D.C. Official Code § 44-1003.02 can constitute a due process violation because the resident is not being fully informed of his or her right to appeal the facility’s decision. Such incomplete notices do not inform residents of all their rights as required, and failure to provide a hearing request form prevents residents from actualizing their legal protections.



***Missing Signature***

**Out of the 316 notices received, 31% (98) were missing a signature from the resident or resident’s representative, or other clarification that the resident or resident’s representative had been notified of and had received the discharge, transfer or relocation notice.**





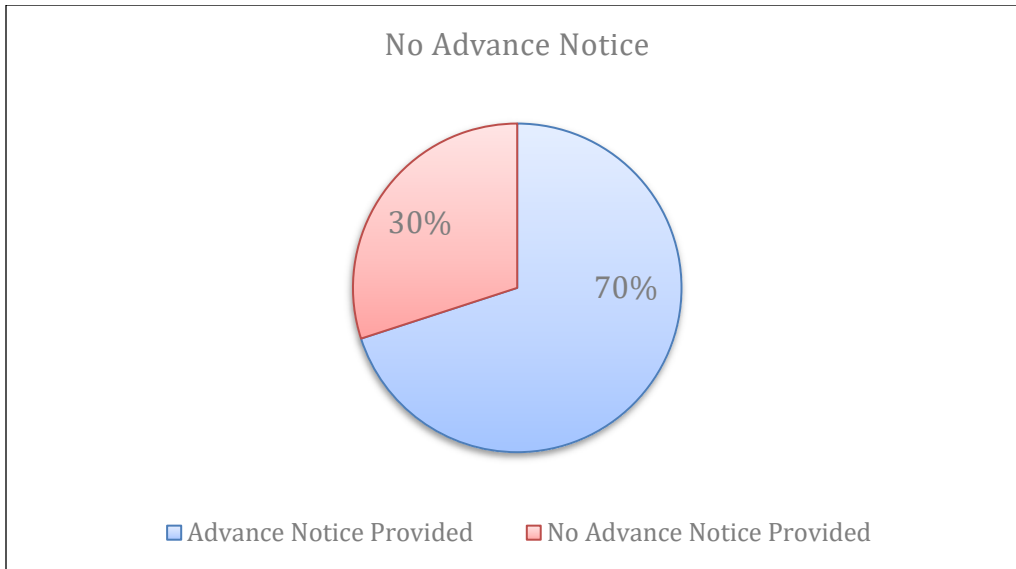
Best Practice Recommendation: We understand that in certain situations, such as an emergency transfer, it is impracticable to obtain a signature. In this situation, the facility should indicate that the resident or resident’s representative was unable to sign. If the resident has a representative, indicate how the representative was informed of the transfer, as indicated below:

**Best Practice Example:**  
*When Unable to Obtain a Signature*

|   |   |
|---|---|
| <p><u>Form Question:</u></p> <p>Resident’s Signature:<br/>_____</p> <p>Resident’s Representative:</p> | <p><u>Bridge Point National Harbor’s Response:</u></p> <p>“Resident unable to sign due to medical condition.”</p> <p>“[Representative] made aware via phone.”</p> |
|---|---|

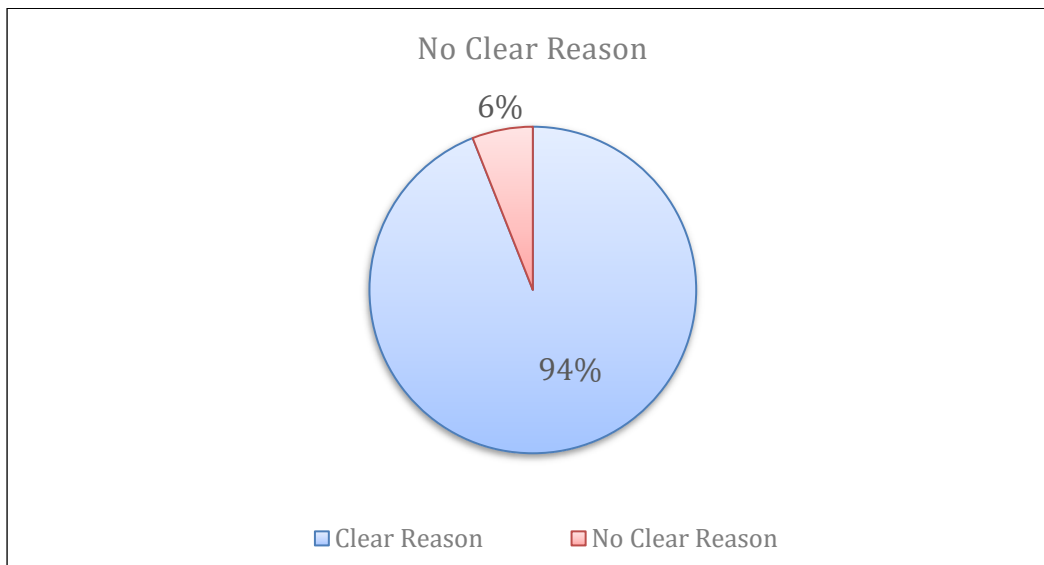
### ***No Advance Notice***

Generally, the facility must give the resident and the resident’s representative at least 30 days’ written and oral notice before the proposed discharge takes place, and 7 days’ notice before a proposed relocation takes place. Analyzing the 144 total notices requiring advanced notice (this includes only discharge and relocation notices), **30% (43) of the notices received did not provide the resident or ODCLTCO with the required advanced notice** prior to the resident’s move.



### ***No Clear Reason Provided***

When a resident is discharged, transferred, or relocated, the facility must give a clear reason why the discharge, transfer, or relocation has occurred. **Of the 316 notices received, 13% (41) did not specify a clear reason for the discharge, transfer, or relocation.**



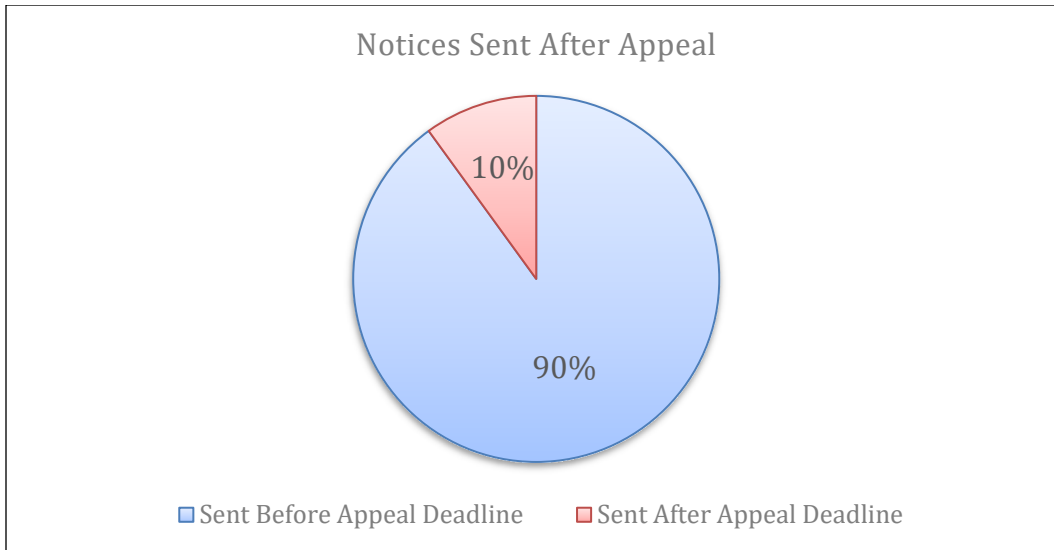
Best Practice Recommendation: For a relocation, it is not sufficient to simply list “room change.” Instead, the facility should specify why the room change occurred (for example: to be closer to the nurse’s station; due to roommate incompatibility; etc.). The best practice example below provides a clear reason for a resident’s discharge when they have completed skilled nursing care:

**Best Practice Example:**  
*Providing a Clear Reason for Discharge/Transfer/Relocation*

|   |   |
|---|---|
| <p><u>Form Question:</u><br/>[Relocation]<br/>The specific reason(s) for this action is as follows:<br/>_____<br/>_____</p> | <p><u>Inspire’s Response:</u><br/>“Resident was transferred to [hospital] with the following diagnosis: Further evaluation and treatment of [condition].”</p> |
|---|---|

### ***Notices Sent After the Appeal Deadline***

Some facilities supply all notices at the conclusion of each month instead of on an ongoing basis as they should be provided to the ODCLTCO. **Out of 316 notices received, 10% (31) were sent after the filing deadline for an appeal.** Timely notices are a crucial aspect of a resident’s rights, allowing them to contest any discharge, transfer, or relocation. By failing to submit notices on time, facilities are nullifying the purpose of this protocol.



Best Practice Recommendation: When a resident waives their right to advance notice prior to discharge or relocation, please indicate such. The best practice example below indicates how this can be done:

**Best Practice Example:**  
*When Resident Waives Advance Notice*

Form Question:

The specific reason(s) for this action is as follows:

\_\_\_\_\_

\_\_\_\_\_

Capitol City's Response:

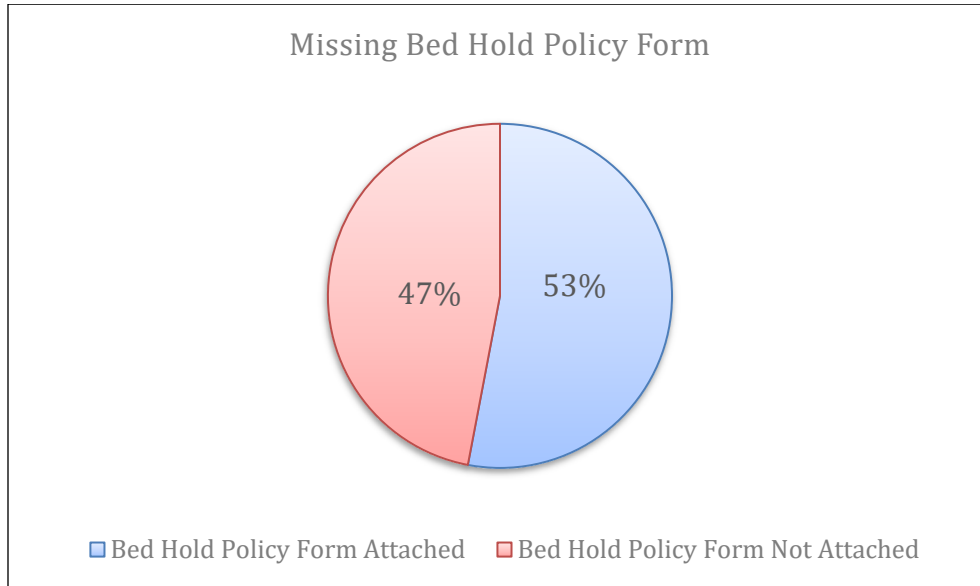
"Room relocation due to infection control, from [room] to [room], *seven day waiting period waived.*"

***Missing Bed Hold Days or Policy Form***

When a resident is transferred and is a Medicaid recipient, the nursing facility must inform the resident of the number of days their bed will be held while they are away.

Medicaid recipients are entitled to a total of 18 bed hold days annually (October 1 through

September 30). Additionally, the facility must attach a bed hold policy form to the transfer notice informing the resident of these rights. **Out of 172 transfer notices, 47% (80) were missing the bed hold policy form attachment.**



**Out of the 172 transfer notices, 15% (26) did not list the number of bed hold policy days the resident had left.**

Best Practice Recommendation: While bed hold policy days do not apply to private pay and Medicare patients, the form should clearly indicate such. Rather than simply putting “N/A” or “not applicable” in the bed hold policy days section, the facility should clearly specify why bed hold days are not applicable to the resident, as modeled in the example below:

**Best Practice Example:**  
*When Bed Hold Days are not applicable*

Form Question:  
If you are being transferred to a hospital or the transfer is for therapeutic leave, attached is this facility's bed hold policy. Your available number of bed-hold days is:  
\_\_\_\_\_

Knollwood's Response:  
“(0) bed-hold days. Medicare patient.”

## Conclusion

The ODCLTCO appreciates the work of facilities to ensure that residents' rights are protected in this important area. However, many facilities either continue to send deficient notices or, in some instances, fail to comply with sending notices all together. **This fall, the ODCLTCO will be conducting trainings on discharge, transfer, and relocation notices** for interested facilities and welcomes an invitation to train long-term care facility employees.

The Office of the State Long-Term Care Ombudsman will continue working with facilities and D.C. Health/HRLA to improve compliance with the discharge notice law to protect residents' rights. For more information, please contact the Office of DC Long-Term Care Ombudsman at 202-434-2190.