

Basic Discharge Complaint Investigation Process Checklist

Complaint Investigation Key Points

While each state has their own policies and procedures for managing and responding to transfer and discharge notices, all Ombudsman programs investigate complaints regarding discharge when a resident requests Ombudsman program assistance in addressing their concern [see 1324.19(b) of the [LTCOP Rule](#) and [NORC resources](#) for additional information regarding complaint processing].

First, the Ombudsman educates and empowers the resident by explaining residents' rights and options. At a minimum:

- Shares information about the Ombudsman program and how it can help.
- Discusses residents' rights and facility responsibilities related to discharges.
- Explains possible advocacy steps (e.g., speaking with the facility staff about the discharge).
- Informs the resident of their right to appeal the notice and the hearing process.
- Explains the right to access legal counsel.
- Offers to assist the resident to resolve the complaint.

Complaint resolution strategies depend on individual circumstances of each resident and the reason for discharge. However, in all cases the Ombudsman should review the notice to identify issues with its contents and investigate the reason for discharge. Identifying unmet requirements will assist the Ombudsman in advocating for the facility to rescind the notice, reissue the notice, use as facts if reporting to the state survey agency, or argue to have the discharge dismissed during the appeal hearing.

If the resident provides consent for the Ombudsman program to investigate, the Ombudsman then develops an agreed upon plan of action with the resident and follows the wishes of the resident. The plan could include, but is not limited to:

- Permission to access the resident's records.
- Permission to speak with any necessary party to assist with preventing the discharge (facility staff, resident's representative, family members, attorney, state survey agency, Medicaid, etc.).
- Request for a care plan meeting and/or a request for a second opinion on a diagnosis.
- Appealing the discharge notice.
- Referral for legal assistance.

Basic Discharge Complaint Investigation Process Checklist

Regardless of the reason for discharge, ask the following questions:

These are basic questions to guide you through the initial investigation process. Not all questions apply in every situation. Your research and questions will grow more focused depending on the reason for discharge and resident direction for addressing the issue.

During your initial visit or contact with the resident, consider asking:

1. Does the resident want to leave or stay in the facility? If the resident wants to stay and dispute the discharge, ask the following.
 - a. How long has the resident lived at the facility?
 - b. Does the resident understand the reason for the discharge?
 - i. What is their perspective on the reason?
 - c. Does the resident have a representative? Is it a legal representative (e.g., a Durable Power of Attorney, guardian/conservator) or an informal representative such as a friend or family member that supports them?
 - d. What is the source of payment for nursing home care (e.g., Medicare, Medicaid, private insurance, private pay, etc.)?
 - e. Does the resident have unmet needs, concerns, or complaints?
 - i. What are they?
 - ii. What has the facility done to address the concerns?

During your initial contact with the administrator or designated facility staff, consider asking:

1. What is the reason for discharge?
2. Where is the resident being discharged?
 - a. Is this a safe, appropriate location?
3. What alternatives were considered to avoid the discharge?
4. Is the facility having difficulty meeting the resident's needs?
 - a. Why is the facility having this difficulty?
 - b. For how long?
 - c. What is the facility currently doing to meet the resident's needs?
5. Are there other concerns (e.g., issues with payment, possible financial exploitation)?

Interviews with pertinent parties will help you take next steps in your investigation such as interviewing staff or outside entities and gathering records.

The following checklist is intended to guide you through some basic complaint resolution steps. If the complaint is not readily resolved, then review additional strategies and steps in the five charts for specific discharge reasons.

Resolution Strategies

Regardless of the reason for discharge, review the transfer or discharge notice:

- Is it complete and in accordance with the notice requirements?
- Does it meet one of the six reasons for transfer or discharge?
- Is the location to which the resident is to be transferred or discharged safe and appropriate?
- Does the notice provide for 30 days? Or as soon as practicable under certain circumstances?
- Is the notice in a language and manner that the resident understands?
- Did the Ombudsman program receive the notice at the same time as the resident?

Action Steps *(attempt one or all)*

Regardless of the reason for discharge, if the facility failed to have complete information, did not provide it in a language and manner that the resident understands, or has incorrect information the Ombudsman can:

- Attempt to resolve the complaint with the facility. If the facility did not provide a location or it is not safe and/or appropriate, ask the facility staff to rescind the notice because it does not meet the required elements. If the facility reissues the notice with the required information this will restart the 30-day period.
- Use any errors on the notice as evidence in an administrative hearing.
- Use errors in the notice as part of your complaint to the state survey agency.

Legal Basis

Regulation §483.15(c)(1)(i): Nursing facilities must permit each resident to remain in the facility, and not transfer or discharge the resident unless the transfer or discharge is for one of six reasons identified in the requirements.

Regulation §483.15(c)(5): Facilities must include specific information in the contents of the notice (e.g., reason for transfer or discharge, effective date of the transfer or discharge, the transfer or discharge location, statement of appeal rights, and more).

Regulation 483.15(c)(4): Facilities are required to provide a 30-day notice of a facility-initiated discharge to the resident, the resident's representative, and the Ombudsman at the same time. The information included in the notice must be in a language and manner that the resident and the representative understand. Notice must be made to the resident, resident's representative, and the Ombudsman as soon as practicable when the safety or health of the individuals in the facility is endangered, if the resident needs urgent medical attention, if the resident's health improves sufficiently, or the resident has not resided in the facility for 30 days.

Federal regulation §483.21(c)(1): Facilities must have a discharge process in place that addresses residents' goals, needs, caregiver support, and appropriate referrals. The process should involve the resident and the resident's representative, when applicable.

This project was supported, in part, by grant number 90OMRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.