

REASON 1

The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.

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- *A complaint investigation and resolution strategy are contingent upon consulting with and receiving permission from the resident and in accordance with the program's policies and procedures.*
 - *This is not an exhaustive list for every case and the resolution strategies and action steps are not in chronological order.*
 - *The specific circumstances surrounding the discharge, including state regulations that may be applicable will also factor into the complaint resolution strategies.*
 - *Review the **Basic Discharge Complaint Investigation Process Checklist** before using the charts to address specific discharge reasons.*
 - *The word "resident" is inclusive of resident representative.*
 - *"Ombudsman" is used as a generic term that may mean the State Ombudsman, a representative of the Office, or the Ombudsman program.*
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Initial Information Gathering

Upon receipt of a discharge or transfer complaint, the Ombudsman will meet with the resident and gather information to determine a resolution strategy. These questions intend to guide you through the investigation process to help you build the argument to rescind the notice and prevent the eviction. Not all questions will be applicable, but it is helpful to review them all as you prepare for interviews to ensure that you review all aspects of the complaint.

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.
2. How long has the resident lived at the facility?
3. Does the resident understand the reason for the discharge?
 - a. What is their perspective on the reason?
4. Did the resident attend the last care plan meeting? If not, why?
 - a. Is the resident in agreement with the care plan?
5. Does the resident have unmet needs, concerns, or complaints?
 - a. What are they?
 - b. What has the facility done to address the concerns?
6. Does the resident want to have a new care plan to address the concerns?
 - a. If yes, does the resident wish to have an Ombudsman present at the care plan meeting?

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

1. What specific needs of the resident can the facility not meet?
 - a. Why is the facility having difficulty meeting the resident's needs? For how long?
 - b. Prior to issuing the discharge notice, what attempts did the facility make to address the resident's needs?
 - c. Did the resident's physician document in the resident's record that the facility could no longer meet resident's needs?
2. Was there a specific incident that made the facility decide to issue the discharge notice?
3. Was the facility aware of the resident's needs and diagnoses prior to admission to the facility?
 - a. Have the resident's needs and diagnoses changed since admission?
4. What is the facility currently doing to meet the resident's needs?
5. What is the date of or when was the last care plan?
6. Did the resident participate in the last care plan meeting? If not, why?
7. Did the resident's representative participate in the last care plan meeting? If not, why?

The interviews with pertinent parties will help you in gathering appropriate documents. As a reminder, these strategies are not in sequential order and some will have more relevance depending on the circumstances of the resident and the complaint. This document intends to link resolution strategies with action steps and with the legal basis to support your advocacy to rescind the discharge notice thereby allowing the resident to remain in the facility.

Resolution Strategies

Review the Discharge Notice. Check the location listed on the discharge notice. The hospital is an appropriate **transfer** location, but it is **not** an appropriate **discharge** location. Other locations that may not be appropriate or safe include hotels, homeless shelters, family who cannot care for the resident, etc.

Action Steps *(attempt one or all)*

- ❑ **Attempt to Resolve 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, that will restart the 30-day period.
- ❑ **Contact the State Survey Agency.** Consult with a surveyor or submit a complaint if the resident wishes. Follow your state policies and procedures for referring a complaint. When submitting the complaint describe the problem in detail and the impact on the resident.
- ❑ **Appeal the Discharge.** Request a hearing (fair hearing or administrative hearing) which will allow the resident to stay in the facility until a decision is made after the fair hearing. Review **Section 4: Appeal Hearings** of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.

Legal Basis

Regulation §483.15(c)(5): The discharge notice must include the location to which the resident is to be transferred or discharged.

Interpretive Guidelines: For significant changes, such as a change in the destination, a new notice must be given that clearly describes the change(s) and resets the transfer or discharge date, to provide 30-day advance notification.

Regulation §483.15(c)(1)(ii): The facility cannot transfer/discharge a resident while the appeal is pending (except in certain situations).¹

Interpretive Guidelines: When a resident chooses to appeal his or her discharge from the facility, the facility may not discharge the resident while the appeal is pending.

Pertinent Definitions:

Discharge – the movement of a resident from a bed in one certified facility to a bed in another certified facility or other location in the community, when return to the original facility is not expected.

Transfer – the movement of a resident from a bed in one certified facility to a bed in another certified facility when the resident expects to return to the original facility.

¹The exceptions include if a resident's condition changes and needs emergent care or becomes a danger to self or others and needs hospitalization.

Resolution Strategies

Review Resident Records.

Examine the resident's records to determine if the facility properly documented their inability to meet the resident's needs.

Ascertain if the facility properly assessed and addressed significant changes in the resident's condition.

Look for evidence about how the facility attempted to meet the resident's needs to prevent the discharge.

Review Records, Admission Agreement, and Public Information. Examine the resident's records, including the signed admissions agreement, and public information distributed by the facility to determine if the facility disclosed special characteristics or any service limitations prior to admission.

Research the facility's website, brochures, or any other forms of public information in which the facility advertises their services.

Action Steps (attempt one or all)

- ❑ **Attempt to Resolve with the Facility.** If there is not sufficient or appropriate documentation, ask the facility to rescind the notice because there is not adequate documentation.
 - ❑ **Contact the State Survey Agency.** Consult with a surveyor or, if the resident wishes, submit a complaint. Follow your state policies and procedures for referring a complaint. When submitting the complaint describe the problem in detail and the impact on the resident.
 - ❑ **Appeal the Discharge.** Request a hearing (fair hearing or administrative hearing) which will allow the resident to stay in the facility until a decision is made after the fair hearing. Review [Section 4: Appeal Hearings](#) of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.
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- ❑ **Attempt to Resolve with the Facility.** If the facility did not disclose any service limitations at the time of admission, the Ombudsman could argue at the hearing that the facility admitted the resident, therefore indicating it could meet the needs of the resident.

If the facility is attempting to discharge a resident due to symptoms or care needs related to diagnoses the facility advertises they can care for, or specializes in, then that supports your argument that the resident's needs can be met and should be allowed to stay in the facility.

For example, if the facility advertises that they specialize in dementia care or have a memory care unit, yet the facility issued a discharge to a resident for wandering, you have a strong argument because the facility advertises that they care for people who have symptoms of dementia and are required to meet the needs of the resident.
 - ❑ **Contact the State Survey Agency.** Consult with a surveyor or submit a complaint if the resident wishes. Follow your state policies and procedures for referring a complaint. When submitting the complaint describe the problem in detail and the impact on the resident.
 - ❑ **Appeal the Discharge.** Request a hearing (fair hearing or administrative hearing) which will allow the resident to stay in the facility until a decision is made after the fair hearing. Review [Section 4: Appeal Hearings](#) of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.

Legal Basis

Regulation §483.15(c)(2)(ii)(A): The resident's attending physician must document that the resident's needs cannot be met.

Regulation §483.15 (c)(2)(i)(B): When a facility issues a discharge notice for this reason, **documentation by the resident's physician** must include the following:

- specific resident need(s) that cannot be met,
- facility attempts to meet the resident need(s), and
- service(s) available at the receiving facility to meet the need(s).

Regulation §483.15(a)(6): The facility must disclose notice of special characteristics or service limitations prior to admission.

Interpretive Guidelines: To enable potential residents and resident representatives to make informed decisions in choosing a facility for admission, facilities must inform residents and resident representatives and potential residents or representatives of any special characteristics or service limitations the facility may have prior to admission. For example, if a facility has limitations in the type of medical care it can provide, this information must be communicated prior to admission.

Disclosure of facility special characteristics does not relieve a facility of its responsibility to provide required nursing and other services for which it is licensed and certified to provide. To see the required services, refer to sections 1819(a) and 1819(b)(4)(A), and sections 1919(a) and 1919(b)(4)(A) of the Social Security Act.

Regulation §483.40: Each resident must receive, and the facility must provide, the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

Resolution Strategies

Review the Care Plan. Carefully review the care plan for evidence that:

- the resident's needs are adequately and appropriately addressed.
- the care plan is person-centered and reflects the resident's preferences and choices.
- there are specific and appropriate interventions.
- there is evidence that the care plan is carried out consistently and, on all shifts.
- the care plan has been revised due to unmet or changing needs.
- the care plan is written in measurable language that allows assessment of its effectiveness.

Sufficient Staffing. Review staffing levels to determine if the facility had sufficient staff to meet the needs of the resident.

Action Steps *(attempt one or all)*

- ❑ **Attempt to Resolve with the Facility.** Discuss with the resident the option of requesting a new care plan meeting to address unmet needs. Ask the facility to rescind the notice based on deficiencies with the current care plan.

If the facility is unwilling to work toward a resolution through a new care plan, you can use this information when making a referral to the state survey agency or to use in a fair hearing.

- ❑ **Contact the State Survey Agency.** Consult with a surveyor or submit a complaint if the resident wishes. Follow your state policies and procedures for referring a complaint. When submitting the complaint describe the problem in detail and the impact on the resident.
- ❑ **Appeal the Discharge.** Request a hearing (fair hearing or administrative hearing) which will allow the resident to stay in the facility until a decision is made after the fair hearing. Review [Section 4: Appeal Hearings](#) of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.

- ❑ **Attempt to Resolve with the Facility.** Review the staffing levels posted in the facility.
To view CMS data on staffing information by facility, visit the Long Term Care Community Coalition (LTCCC) website: <https://nursinghome411.org/nursing-home-data-information/staffing>.

Use the information to have a conversation with facility leadership about staff availability to meet the resident's needs. Share specific examples of the resident's needs not being met.

- ❑ **Contact the State Survey Agency.** If no resolution, consider speaking with the survey agency or submitting a complaint, if the resident wishes. Follow your state policies and procedures for referring a complaint. When submitting the complaint describe the problem in detail and the impact on the resident (e.g., examples of the resident's needs not being met or not receiving care in a timely manner).

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Legal Basis

Regulation §483.21(b): The facility must develop and implement a comprehensive person-centered care plan ... to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment.

Regulation §483.10(e)(3): The right to reside and receive services in the facility with reasonable accommodation of resident needs and preferences.

Regulation §483.10(c)(2)(iv): Residents have the right to receive the services and/or items included in the plan of care.

Regulation §483.21(b)(2)(iii): The care plan must be reviewed and revised after each assessment, including both the comprehensive and quarterly review assessments.

Interpretive Guidelines: The comprehensive care plan must reflect interventions to enable each resident to meet his/her objectives. Interventions are the specific care and services that will be implemented.

Regulation §483.40(a): The facility must have sufficient staff who provide direct services to residents with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity, and diagnoses of the facility's resident population in accordance with § 483.70(e).

Regulation §483.70(e)(1): The facility must conduct and document a facility assessment that, in part, includes the number of residents, the care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, and overall acuity. The reason for the assessment is to determine if the facility has the necessary resources to care for its residents competently during both day-to-day operations and emergencies.

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Resolution Strategies

Sufficient Staffing continued

Action Steps (attempt one or all)

- ❑ **Appeal the Discharge.** Request a hearing (fair hearing or administrative hearing) which will allow the resident to stay in the facility until a decision is made after the fair hearing. Review [Section 4: Appeal Hearings](#) of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.

Legal Basis

Regulation §483.35: The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity, and diagnoses of the facility's resident population in accordance with the facility assessment required at § 483.70(e).

Interpretive Guidelines: INTENT §483.35(a)(1)-(2) To ensure that there is sufficient, qualified nursing staff available at all times to provide nursing and related services to meet the residents' needs safely and in a manner that promotes each resident's rights, physical, mental, and psychosocial well-being.

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