

## REASON 5

# The resident has failed to pay for (or to have paid under Medicare or Medicaid) his or her stay at the facility.

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*Non-payment occurs if, after reasonable and appropriate notice, the resident does not pay for a stay at the facility. Non-payment also applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. If those allowable charges or part of the bill is not paid to the facility, (e.g., amount owed from Social Security check) then the facility may consider the resident to be in a non-payment status.*

- *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. What is the resident's payor source? Private insurance, private pay, Medicare and/or Medicaid?
2. Is the resident's Medicaid application pending?
3. Does the resident need assistance with applying for Medicaid?
4. Does the resident receive Social Security, a pension, or Veterans Assistance? If yes, where are the checks sent?
5. Does someone help the resident with their bills? If yes, then who?
6. Is the resident satisfied with the individual(s) assisting him/her with their finances?
7. Was the resident notified by the facility that she/he owes money?

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

1. What is the resident's payor source?
2. Does the resident receive Social Security, a pension, or Veterans Assistance? If yes, where are the checks sent?
3. How much does the resident owe the facility?
4. How and when did the facility notify the resident and/or resident representative about the non-payment prior to issuing the discharge notice?
5. Who has the resident designated to pay the bill (e.g., a [representative payee](#) for Social Security)? Has the facility spoken with the designee?
6. Why isn't the bill being paid?
7. Has an application been made to Medicaid? If yes, when was the application filed?
8. Does the administrator believe the resident may be financially exploited by the representative? If yes, has or will the administrator call law enforcement or Adult Protective Services?

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.

Review the notice for unmet requirements to advocate for the facility to rescind the 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 follow proper procedures, the Ombudsman could argue that a new notice should be sent, which would restart the 30-day time frame and provide more time for the resident to resolve the issue.  
Familiarize yourself with your state's interpretation of "reasonable and appropriate notice" as you could argue that the resident and/or representative did not receive reasonable and appropriate notice to pay the bill.
- ❑ **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.

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### Legal Basis

**Regulation §483.15(c)(1)(i)(E):** 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. Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid.

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

**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.

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<sup>1</sup>The 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 the Discharge Notice continued*

### Determine Medicaid Eligibility Status.

Determine if the resident received information about Medicaid and if a Medicaid application needs to be completed.

Work with the resident to decide if assistance is needed with completing the application and seek assistance from the resident's representative and/or the facility.

## 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.
- ❑ **Attempt to Resolve with the Facility.** If the resident's Medicaid application is pending or if it has been denied, but is in an appeal status, ask the facility to rescind the notice until a determination is made and/or use this as an argument during the hearing.  
  
If the resident and/or the resident's representative were unaware of a change in payment status, remind the facility of their responsibility to notify them and to assist with any third-party paperwork. Ask the facility to rescind the notice based on the lack of notification.
- ❑ **Contact the State Survey Agency.** If the facility is not cooperative in rescinding the discharge notice, 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 §483.10(g)(13):** The facility must display in the facility written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

**Interpretive Guidelines:** To fulfill the requirement §483.10(g)(13), facility staff may use written materials issued by the State Medicaid agency and the Federal government relating to these benefits. Facilities may fulfill their obligation to orally inform residents or prospective residents about how to apply for Medicaid or Medicare by assisting them in working with the local Social Security Office or the local unit of the State Medicaid agency. Simply providing a phone number is not sufficient in assisting the resident or the resident representative. Facilities are not responsible for orally providing detailed information about Medicare and Medicaid eligibility rules.

**Regulation §483.10(g)(17):** The facility must (i) inform each Medicaid-eligible resident, in writing, at the time of admission to the nursing facility and when the resident becomes eligible for Medicaid of – (A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged; (B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and (ii) Inform each Medicaid-eligible resident when changes are made to the items and services specified in §483.10(g)(17)(i)(A) and (B) of this section.

**Regulation §483.15 (c)(1)(i)(E):** Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay.

**Interpretive Guidelines:** A resident cannot be discharged for nonpayment while their Medicaid eligibility is pending.

**Interpretive Guidelines:** If a resident's initial Medicaid application is denied but appealed, the resident is not considered to be in nonpayment status. Thus, an appeal suspends a finding of nonpayment.

**Interpretive Guidelines:** It is the responsibility of the facility to notify the resident of their change in payment status, and the facility should ensure the resident has the necessary assistance to submit any third-party paperwork.

## Resolution Strategies

### Representative Payee.

Determine whether the resident has designated a representative payee for Social Security benefits and where the Social Security check is going.<sup>2</sup>

**Financial Exploitation.** If the facility suspects that the resident may be financially exploited, they are required to report this to the state survey agency and to law enforcement. Check your state's reporting requirements for facilities as there may be additional regulations such as reporting to Adult Protective Services.

## Action Steps (attempt one or all)

- Attempt to Resolve with the Facility.** If the representative payee is not fulfilling their duties, discuss with the resident their right to designate another person or entity.  
If the resident is not able to communicate informed consent and there is no representative payee or the representative payee is not paying the bill, discuss with the facility their option to request to become the receiver from Social Security.  
Remind the facility of their responsibility to inform the resident of a change in payment status and ensure the resident has assistance to submit third party paperwork.  
For additional information on representative payee go to: <https://www.ssa.gov/payee/index.htm>  
If it is potential financial exploitation, determine if the resident agrees with reporting the alleged financial exploitation to the state survey agency and local law enforcement. Inform the resident of his or her rights to an attorney and options for addressing the misappropriation of funds or financial exploitation (e.g., identify a new representative payee or agent under a power of attorney).  
Remind the facility of their responsibility to report potential financial exploitation to the state survey agency and local law enforcement prior to issuing a discharge notice.  
If the facility will not report the potential financial exploitation AND if the resident is not able to communicate informed consent, follow your state's policies and procedures for reporting abuse, neglect, and exploitation [LTCOP Final Rule §1324.19(b)(7)].  
For further information on financial exploitation, visit: <https://ltcombudsman.org/issues/abuse-neglect-and-exploitation-in-long-term-care-facilities>.
- Contact the State Survey Agency.** If the facility is not cooperative in rescinding the discharge notice and supporting the resident in submitting third party paperwork or reporting potential misappropriation or exploitation, 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 §483.12:** The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation

**Regulation §483.12 (a)(5):** The facility must ensure reporting of crimes occurring in federally funded long-term care facilities in accordance with section 1150B of the Social Security Act.

**Regulations §483.12 (a)(5)(A) & (B):** The facility must report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility. The report shall occur not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

**Interpretive Guidelines:** If there is evidence of exploitation or misappropriation of the resident's funds by the representative, the facility should take steps to notify the appropriate authorities on the resident's behalf, before discharging the resident.

<sup>2</sup>Appointed by Social Security, a representative payee is a person or organization who acts as the receiver of Social Security for a beneficiary who is unable to manage their own benefits.