Goals of today’s program

• To clarify the requirements regarding transfer and discharge of Nursing Home residents, including subacute unit discharges.

• To clarify related regulations in regard to bed hold and readmission after absence from the facility.
Transfer and discharge rights. Transfer and discharge shall include movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge shall not refer to movement of a resident to a bed within the same certified facility.

The facility must permit each resident to remain in the facility.
Regulatory reference

Federal Regulations 483.12

Corresponding F tags: F-202 to F-207

- F202 - Regulatory reasons for discharge transfer
- F203 - Contents of the DC notice
- F204 - Orientation to DC (DC planning)
- F205 - Bed hold and readmission
- F206-F207 Permitting resident to return to the facility
5 Regulatory reasons for discharge

THE FACILITY MUST INCLUDE A REGULATORY REASON IN THE NOTICE OF DISCHARGE

1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility.
2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; (most commonly used with subacute residents)
3. The health or safety of individuals in the facility would otherwise be endangered, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to safely address the problem.
4. Transfer and discharge shall also be permissible when the RESIDENT HAS FAILED, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) a stay at the facility.

Such transfer or discharge shall be permissible only if a CHARGE IS NOT IN DISPUTE, no appeal of a denial of benefits is pending, or funds for payment are ACTUALLY AVAILABLE and the resident refuses to cooperate with the facility in obtaining the funds.
5. Transfer or discharge shall also be permissible when the facility discontinues operation and has received approval of its plan of closure in accordance with subdivision (i) of Section 401.3 of this Subchapter.

The facility should use all appropriate reasons, as they apply to the situation.
Required Documentation

- The resident's physician and interdisciplinary care team, must document reasons and agreement with the DC plan.

- Notify the resident and designated representative of the TRANSFER or DISCHARGE and the reasons for the move in **writing** and in a language and manner they understand; (DC NOTICE)

- The reason for DC -transfer must be recorded in the resident's clinical record.
The Discharge Procedure

- The facility is required to give written notice of transfer and or discharge to the resident and designated representative whether the DC is *voluntary or involuntary*.

- The facility must use a regulatory reason for discharge when preparing a DC notice.

- In addition, with transfer, the facility is required to provide verbal and written notice of bed hold policy both on admission and at the time of transfer.
Overview of the Process

- Facility identifies that resident is ready for discharge. This can be voluntary or involuntary.

- A DC location is identified and secured. This must be a safe, appropriate and must be a confirmed location that is available to the resident.

- A DC plan is prepared by the facility to meet the resident’s medical needs in the new setting.

- The written notice of discharge is issued to the resident and to the designated representative.
The Discharge Notice

In order to be valid, the notice must meet regulatory requirements and include:

- Resident’s name and copy to Designated Representative.
- Date of issue and planned date of discharge.
- Confirmed discharge location must be included.
- Reason for DC...one of the regulatory reasons.
- Appeal Information (how to appeal and appeal rights).
- Advocacy support.
Advocacy support

- Ombudsman contact information

- For residents with developmental disabilities or for residents who suffer from mental illness, the notice must also contain the mailing address and phone numbers for the Commission on Quality of Care and Advocacy for Persons with Mental Disabilities
Length of notice

30 day notice is required:
- non payment
- needs cannot be met in facility, after reasonable accommodation
- closure

Less than 30 days:
- imminent danger
- health & safety of others is in jeopardy
- serious health issues
- improved health
- resident request (voluntary)
Resident’s rights pertaining to DC

- The resident can appeal the discharge itself or the planned location.

- A pre-transfer on site appeal determination (the hearing) is held if the request is made to the DOH within 15 days of receipt of the notice.

- The resident may remain in the facility pending the hearing, if the request is made within 15 days.

- A post transfer hearing within 90 days of receiving the notice, if they did not appeal in a timely manner OR did not appeal prior to discharge.
Resident rights continued

- With a post discharge appeal, the resident returns to the next available bed if they win the appeal.

- With Imminent danger transfer, the bed is held until the hearing decision is determined. If the resident wins the appeal, they return to their bed.

- Resident may examine their medical records.
Resident Rights pertaining to Appeals

This information must be included in DC notice

- You may appeal this notice if you disagree with this action. The resident has the right to an evidentiary hearing to appeal the proposed discharge or transfer.

- To request an appeal: by phone (1-888-201-4563), fax (518-408-1157) or mail to the Department of Health Centralized Complaint Intake Program.

- The resident must remain in the facility, (except in cases of imminent danger), pending the appeal hearing decision, if the appeal request is made within 15 days of the date the resident received the discharge/transfer notice.
Appeal rights, continued

- The hearing may be held post-discharge if the appeal request is made after 15 days following the date of receipt of the notice.

- The resident has 90 days from the date the notice is received to request an appeal hearing.
When an appeal is requested...

- Request received by Hotline Intake Staff and assigned to Case Resolution.

- If appeal is made within 15 days of receipt, the resident may remain in the facility.

- With an appeal request, the facility cannot DC the resident until the matter is resolved.

- If the appeal is made beyond 15 days, the facility may discharge according to plan, if the notice is valid and a location has been secured. A post DC appeal will be held if the resident wishes to proceed.
Next steps in the process

CRU staff will request the facility documents:

- Resident face sheet
- DC notice
- DC plan (How needs will be met in DC location)
- Brief summary of WHY DC is being planned
- MD approval of DC (except for non-payment)
- Attorney contact information, if the facility is using an attorney

If resident uses attorney, it is at their own cost.
CRU document review

- Is the DC notice valid?
- Does the DC plan meet the medical needs?
- Is the location available to the resident? Has it been secured?
- Is the appeal request made within 15 days of issue?
- Does the notice meet regulatory requirements?
- Does the MD agree with the DC plan?
When a Notice of Discharge is Invalid

- CRU notifies the complainant and the facility.

- The facility cannot DC on the invalid notice.

- In order to proceed with DC, a new letter and/or plan must be issued. NOTE: the resident may appeal the new notice.
Facility DC planning

- DC outlet (community placement) needs to be available to the resident

- DC outlet must be able to accommodate resident’s needs

- DC plan must detail how the resident’s medical needs will be met in the specified location. Medications? Follow up appointments?

- *Same requirements apply to subacute or “rehab beds”.*

- Without an appeal, if the facility fails to DC on the specified day, the notice becomes invalid.
The DC appeal hearing

- The Administrative Law Judges (ALJ) from the Department of Health’s Bureau of Adjudication conduct the discharge hearings.

- At the time the Bureau receives the hearing request, the Chief ALJ assigns an ALJ to the case, whose responsibility it is to select the hearing date and time.

- The Bureau will then mail the parties the Notice of Hearing to inform the parties as to the time, date and location of the hearing. The parties may request adjournments of the date that the ALJ chooses.
Hearing continued

- The hearing usually takes place at the nursing home.
- One exception would occur in the imminent danger hearings, in which the resident has been transferred. In such cases, the hearing most often takes places in a psychiatric unit at a general hospital.
- The nursing home bears the burden to prove the transfer/discharge necessary and the discharge plan appropriate.
- Judge renders decision.
Bed hold changes - July 2010

Medicaid pays for bed hold for resident hospitalization for 14 days IF:

- Resident resides in facility for 30 days,
- Is a Medicaid recipient,
- Facility occupancy 95% or greater,
- After day 14, facility can release bed and must admit to the next available SEMI-PRIVATE bed, if they can meet resident’s needs,
- Must give WRITTEN notice of bed hold information on admission and at time of transfer.
If there is no bed hold

If bed hold was not in effect, or if resident has used the allotted days, or if resident is not Medicaid…

- The facility can accept private pay funds to hold bed.

- Must inform resident/designated rep of bed hold status in writing.

- If no bed hold, must bring resident back to next available SEMI PRIVATE bed, if facility can meet resident needs.
Return to the Nursing Home

• F 206. A nursing home shall establish and follow a written policy under which a resident who has resided in the nursing home for 30 days or more and who has been hospitalized or who has been transferred or discharged on therapeutic leave without being given a bed-hold is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident (a) requires the services provided by the facility; and (b) is eligible for Medicaid nursing home services.

• F207. Refers to all payment sources
Contact Information

- Joanne Breden, Bureau of Complaints and Analysis, 518 402 5447 or JLB08@health.state.ny.us