

## **CMS ISSUES CLARIFICATION OF NOTICE REQUIREMENTS TO LONG-TERM CARE OMBUDSMAN WHEN RESIDENT IS TRANSFERRED OR DISCHARGED FROM LONG-TERM CARE FACILITY - REVIEW OF PRACTICES, POLICIES AND PROCEDURES REQUIRED**

This is another article in a series discussing the complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities ("Final Regulations") by the Centers for Medicare & Medicaid Services ("CMS"). Hall Render published an [overview](#) of Final Regulations components as well as Parts 1, 2, 3 and 4 in the series, which are located [here](#), [here](#), [here](#) and [here](#).

### **EXECUTIVE SUMMARY**

On May 12, 2017, the Survey and Certification Group at Centers for Medicare & Medicaid Services ("CMS") issued a memorandum, "Implementation Issues, Long-Term Care Regulatory Changes: Substandard Quality of Care (SQC) and Clarification of Notice before Transfer or Discharge Requirements" ("S&C Memo") clarifying the requirements of the Final Rule regarding the timing for providing notice to the State Long-Term Care Ombudsman ("Ombudsman") in the event a resident is transferred or discharged from the long-term care facility. Facilities must immediately review and revise their discharge and transfer notice practices, policies and procedures.

### **BACKGROUND**

Part 483.15(c)(3)(i) to Title 42 of the Final Regulations requires, in part, that before a facility transfers or discharges 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 (LTC) Ombudsman." Sending a copy of the notice to a representative of the Ombudsman ensures the Ombudsman is aware of facility practices and activities related to transfers and discharges, providing added protection to residents.

In the S&C Memo, CMS provides clarification of the requirements for transfers and discharges for: (1) facility-initiated discharges and transfers; and (2) resident-initiated transfers and discharges.

### **1) Facility-Initiated Discharges and Transfers**

CMS clarifies the notice requirements for facility-initiated discharges or transfers in the following circumstances.

#### **■ Transfers While Resident Is Still Hospitalized**

When a facility decides to discharge the resident while the resident is still hospitalized, CMS requires that the facility send a notice of discharge to the resident and resident representative and must also send a copy of the discharge notice to a representative of the Ombudsman. Notice to the Ombudsman must occur at the same time the notice of discharge is provided to the resident and resident representative, even though, at the time of initial emergency transfer, sending a copy of the transfer notice to the Ombudsman only needed to occur as soon as practicable, as described below.

#### **■ Emergency Transfers**

When a resident is temporarily transferred on an emergency basis to an acute care facility, notice of the transfer may be provided to the resident and resident representative as soon as practicable, according to Part 483.15(c)(4)(ii)(D) to Title 42 of the Final Regulations. Copies of notices for emergency transfers must also still be sent to the Ombudsman. However, the S&C Memo provides that they may be sent when practicable, such as in a list of residents on a monthly basis.

#### **■ Other Types of Facility-Initiated Discharges**

For any other types of facility-initiated discharges, the facility must provide notice of discharge to the resident and resident

representative along with a copy of the notice to the Ombudsman at least 30 days prior to the discharge or as soon as possible. The copy of the notice to the Ombudsman must be sent at the same time notice is provided to the resident and resident representative.

## 2) Resident-Initiated Discharges and Transfers

A resident-initiated transfer or discharge means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the long-term care facility. The medical record must contain documentation or evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility. A resident's expression of a general desire or goal to return home or to the community or elopement of a resident who is cognitively impaired should not be taken as notice of intent to leave the facility. For resident-initiated transfers or discharges, sending a copy of the notice to the Ombudsman is not required.

## SURVEY AND ENFORCEMENT

The requirements in the S&C Memo are effective immediately. Facilities unable to demonstrate compliance are at risk of citation for non-compliance with the CMS Requirements of Participation.

## PRACTICAL TAKEAWAYS

Facilities must immediately review and revise their discharge and transfer notice practices, policies and procedures to demonstrate that facilities:

- Notify the Ombudsman at the same time the notice of discharge is provided to the resident and resident representative, when the resident is hospitalized;
- Notify the Ombudsman when practicable when an emergency transfer occurs; and
- Notify the Ombudsman at least 30 days prior to the discharge or as soon as possible for all other facility-initiated discharges.

A link to the S&C Memo is [here](#).

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