

Admission, Transfer, and Discharge Rights



Questions & Answers

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The NDLTCA requested that answers to commonly asked questions regarding the Requirements for Transfer and Discharge be provided to all facilities in writing.

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Disclaimer

The information provided in this document is only intended to be a general summary, and not intended to take the place of statutes, regulations, rules, and/or other policy materials. We encourage readers to review the specific statutes, regulations, rules, and other interpretive materials for a full and accurate statement of their contents. Any future revisions/updates made by the Centers for Medicare and Medicaid Services (CMS) and/or the North Dakota Department of Human Services could result in portions of this document no longer being correct/accurate.

483.5 Definitions

(a) Facility defined. For purposes of this subpart, facility means a skilled nursing facility (SNF) that meets the requirements of sections 1819(a), (b), (c), and (d) of the Act, or a nursing facility (NF) that meets the requirements of sections 1919(a), (b), (c), and (d) of the Act. “Facility” may include a distinct part of an institution (as defined in paragraph (b) of this section and specified in § 440.40 and § 440.155 of this chapter), but does not include an institution for individuals with intellectual disabilities or persons with related conditions described in § 440.150 of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the “facility” is always the entity that participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution. For Medicare, an SNF (see section 1819(a)(1) of the Act), and for Medicaid, an NF (see section 1919(a)(1) of the Act) may not be an institution for mental diseases as defined in § 435.1010 of this chapter.

Composite distinct part.

(1) Definition. A composite distinct part is a distinct part consisting of two or more noncontiguous components that are not located within the same campus, as defined in §413.65 (a)(2) of this chapter.

(2) Requirements. In addition to meeting the requirements of paragraph (b) of this section, a composite distinct part must meet all of the following requirements: . . .

Resident representative. For purposes of this subpart, the term resident representative means any of the following:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

(2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications; or

(3) Legal representative, as used in section 712 of the Older Americans Act; or

(4) The court-appointed guardian or conservator of a resident.

(5) Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

Transfer and discharge includes 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 does not refer to movement of a resident to a bed within the same certified facility.

***50-10.2-01. Definitions.**

"Department" means the department of human services.

"Facility" means a skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital approved to furnish long-term care services.

Orientation for Transfer or Discharge §483.15 (c)(7) [F204]. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

Equal Access to Quality Care §483.15 (b) [F207].

A facility must establish, maintain and implement identical policies and practices regarding transfer and discharge, as defined in §483.5 and the provision of services for all individuals regardless of source of payment, consistent with §483.10 (a)(2).

Room Changes in a Composite Distinct Part §483.15 (c)(9) [F207]. Room changes in a facility that is a composite distinct part (as defined in §483.5) are subject to the requirements of §483.10 (e)(7) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

***The Rate Setting Manual for Nursing Facilities** published by Medical Services, North Dakota Department of Human Services states the following:

"Facility" means a nursing facility not owned or administered by state government or a nursing facility owned or administered by state government which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for individuals with intellectual disabilities.

"Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".

"Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing bed facility, transitional care unit, sub-acute unit, an intermediate care facility for individuals with intellectual disabilities, or an acute care setting, or, if not in an institutional setting, is not receiving home and community based waived services.

Section 4 – Participation Requirement

A facility must comply with the following provisions in order to be eligible to receive medical assistance payments: . . .

7. A facility may not refuse, for more than twenty-four hours, to accept a resident returning to the same bed or an available bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services. . . .
15. A facility may not accept any payment to hold a bed prior to the admission of a resident.
16. A facility shall readmit a resident whose leave exceeds the facility's bed hold period 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 medical assistance.

Section 6 – Resident Days . . .

3. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave. The payment rate for allowed hospital leave days may not exceed the established rate for group PA1 under the reduced physical functioning category. . . .
4. A maximum of twenty-four therapeutic leave days per individual per rate year may be allowed for payment by the medical assistance program. The payment rate for allowed therapeutic leave days may not exceed the established rate for group PA1 under the reduced physical functioning category. . . .

1. QUESTION:

What requirements must SNFs/NFs, including a hospital based distinct part nursing facility, follow in regard to a transfer or discharge?

ANSWER: All SNFs/NFs must follow:

1. Federal Regulations for Long Term Care (42 CFR §483.15 Admission, Transfer and Discharge Rights [F201 through F208]; and
 - ✓ Exception: There are some requirements relating to bed-hold that do not apply to a Medicare only hospital based distinct part skilled nursing facility. We are waiting for clarification from CMS.
2. Requirements mandated by the North Dakota Department of Human Services (ND Administrative Code, Chapter 75-01-03).
 - 75-01-03-06.2. Giving of notice.
 - 75-01-03-07. Explanation of right to fair hearing.
 - 75-01-03-08.1. Notice of facility's intention to transfer or discharge a resident
 - 75-01-03-09.1. Facility responsibility prior to a fair hearing concerning transfer or discharge.
3. Requirements of North Dakota Century Code Chapter 50.10.2.

2. QUESTION:

Define a transfer and discharge.

ANSWER:

42 CFR §483.5 states, transfer and discharge includes 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 does not refer to movement of a resident to a bed within the same certified facility.

3. QUESTION:

Define a transfer versus a discharge.

ANSWER:

*N.D. Administrative Code 75-01-03-08.1 (1) defines discharge and transfer as:

- "Discharge" means movement from a facility to non institutional setting when the discharging facility ceases to be legally responsible for the care of the resident. (Examples include but are not limited to: resident's home, adult foster care, children's home).
- "Transfer" includes movement from a facility to another institutional setting when the legal responsibility for care of the resident changes from transferring facility to the receiving institutional setting. (Examples include but are not limited to: hospital, another nursing facility, swing bed unit, ICF for Individuals with Intellectual Disabilities (IID)).

4. QUESTION:

What does the contents of the written notice for transfer or discharge need to include?

ANSWER:

There are both federal and state requirements with respect to what must be included in the transfer or discharge written notice.

The federal requirements related to SNFs/NFs at §483.15 (c)(5) [F203] specify the contents of the notice for transfer or discharge to include:

- The reason for transfer or discharge;
- The effective date of transfer or discharge;
- The location to which the resident is transferred or discharged;
- A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
- The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
- For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and
- For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

- In addition, if the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available (refer to §483.15 (c)(6) [F203]).
- In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives (refer to §483.15 (c)(8) [F203], as well as the plan for the transfer and adequate relocation of the residents, as required at §483.70(l).

*N.D. Administrative Code, Chapter 75-01-03-08.1 requires the contents of the transfer or discharge notice for a skilled nursing care facility resident to also include:

- A statement that the facility intends to transfer or discharge the resident, as the case may be;
- If the Medicaid program is paying for some or all of the cost of services furnished to the resident by the facility, a statement that those Medicaid payments will continue until after the hearing unless:
 - 1) The sole issue at the hearing is one of state or federal law or policy and the resident is so informed in writing; or
 - 2) Some change in circumstances affects the resident's eligibility for medical benefits and the resident is so notified in writing;
- A statement that the transfer or discharge will be delayed, if a request for fair hearing is filed before the effective date of the transfer or discharge:
 - 1) In the case of a discharge for nonpayment of facility charges, at least until the hearing officer recommends a decision that the charges were due and unpaid at the time the facility issued a notice of discharge; and
 - 2) In all other cases, until the fair hearing decision is rendered; and
- A statement that the resident may represent him or herself at the hearing, or may use legal counsel, a relative, a friend, or other spokesperson.

*NDCC 50-10.2-02 (1.)(m) states that residents in a skilled nursing care facility, basic care facility, assisted living facility and swing-bed hospital have the right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

***PLEASE NOTE:** The contents of the transfer or discharge notice should contain the contents described above with the following exception: There are no appeal rights for basic care and assisted living residents, so information related to appeals should not be included in their transfer or discharge notices.

5. QUESTION:

A 30 day notice must be issued for a change in a resident's level of care. Can a resident be transferred to a higher level of care prior to 30 days, if the resident agrees to the transfer?

ANSWER:

Yes. A 30 day notice must be issued for a change in the resident's level of care. However, the resident can agree to the transfer prior to the end date of the notice.

6. QUESTION:

At what point in time is the written transfer or discharge notice given?

ANSWER:

The federal requirements specific to SNFs/NFs are as follows:

42 CFR §483.15 (c)(4)(i) [F203] states a notice of transfer or discharge must be made by the facility at least 30 days prior to a move occurring.

42 CFR §483.15 (c)(4)(ii) [F203] states the exception to the 30 day notice is: a notice may be made as soon as practicable before transfer or discharge when:

- The safety of individuals in the facility would be endangered;
- The health of individuals in the facility would be endangered;
- The resident's health improves sufficiently to allow a more immediate transfer or discharge;
- An immediate transfer or discharge is required by the resident's urgent medical needs;
- A resident has not resided in the facility for 30 days.

Interpretive Guidelines for F205 state:

- In cases of emergency transfer, notice "at the time of transfer" means that the family, surrogate, or representative are provided with written notification within 24 hours of the transfer.

This will not affect the SNF/NF resident's right to appeal, as NDAC 75-01-03-08.1 (2) states, the date of issuance is the day notice is delivered or mailed to the resident.

The state requirements are as follows:

*NDCC 50-10.2-01 (3) defines facility as “a skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital approved to furnish long-term care services.” The rights of residents in these health care facilities related to provision of the written transfer or discharge notices is as follows:

*NDCC 50-10.2-02 (1.)(m) states the right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

*North Dakota Division of Health Facilities finds it acceptable if, for example, a resident is transferred on an emergent basis for medical reasons, or incompatibility which affects a resident's welfare or that of another on Saturday early a.m. but the transfer notice is not given until Monday morning (approximately 32-36 hours later). This will meet the requirements for provision of the written transfer notice in skilled nursing facility, basic care facility, assisted living facility, or swing-bed hospital consistent with NDCC 50-10.2-02(1)(m) discussed above.

*There are also times when a resident is transferred to a hospital, and based on assessment, the determination is made that the resident's needs exceed the services that can be provided by the skilled nursing facility, basic care facility, assisted living facility, or swing-bed hospital on more than a temporary basis. In this instance, the facility should notify the resident and resident's representative(s) as soon as the determination is made, and then issue a written discharge notice which contains the required content.

7. QUESTION:

Who has to receive the transfer notice when a resident is hospitalized?

ANSWER:

The federal requirements for SNFs/NFs at 42 CFR §483.15 (c)(3)(i) [F203] states, 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.

PLEASE NOTE: In addition, the facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

The facility must record the reasons for the transfer or discharge in the resident's medical record in accordance with 42 CFR §483.15 (c)(2) [F202].

*The state requirements for skilled nursing care facilities, basic care facilities, assisted living facilities and swing-bed hospitals at NDCC 50-01.2-02 (1) identify that the resident and member of the resident's immediate family or any existing legal guardian of the resident should be notified of the residents rights. This would include notification of transfers and discharges.

8. QUESTION:

What documentation is required in the medical record when the facility transfers or discharges a resident?

ANSWER:

The federal requirements for SNFs/NFs at §483.15 (c)(2) [F202] state when the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section [refer to F201], the facility must ensure that the transfer or discharge is **documented** in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Effective November 28, 2017 Documentation Required, and Information that Must be Provided to the Receiving Provider

The federal requirements for SNFs/NFs at §483.15(c)(2) [F202] state §483.15(c)(2)(i) and (c)(iii) will be implemented beginning November 28, 2017.

The federal requirements for SNFs/NFs at §483.15 (c)(2) [F202] state when the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section [refer to F201], the facility must ensure that the transfer or discharge is **documented** in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

- §483.15 (c)(2)(i) [F202] states, documentation in the resident's medical record must include:
 - The basis for the transfer per paragraph (c)(1)(i) [refer to F201] of this section.
 - In the case of paragraph (c)(1)(i)(A) of this section [*which is the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility*], the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

- §483.15 (c)(2)(ii) [F202] states, the documentation required by paragraph §483.15 (c)(2)(i) of this section [see above] must be made by:
 - The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section [*(c)(1)(A) is the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility; and (c)(1)(B) is 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*]; and
 - A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section [*(c)(1)(i)(C) is the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident; and (c)(1)(i)(D) is the health of individuals in the facility would otherwise be endangered*).
- §483.15 (c)(2)(iii) states, information provided to the receiving provider must include a minimum of the following:
 - (A) Contact information of the practitioner responsible for the care of the resident.
 - (B) Resident representative information including contact information
 - (C) Advance Directive information
 - (D) All special instructions or precautions for ongoing care, as appropriate.
 - (E) Comprehensive care plan goals;
 - (F) All other necessary information, including a copy of the residents discharge summary, consistent with §483.21 (c)(2) as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

9. QUESTION:

Will a telephone call to the hospitals discharge planner constitute a discharge or transfer notice?

ANSWER:

No. 42 CFR §483.15 (c)(3)(i) states the notification must be in writing and in a language and manner the appropriate parties understand. Therefore a telephone call **does not** constitute an acceptable transfer or discharge notice.

10. QUESTION:

If facility staff feel a resident is not capable of understanding the discharge or transfer notice, then does a notice need to be given to the resident?

ANSWER:

42 CFR §483.15 (c)(3)(i) states the resident must receive a written notice and in a language and manner they understand. This requirement **does not** allow for facility staff to determine which

residents have the cognitive or physical status to receive a transfer or discharge notice.

11. QUESTION:

Should facilities be developing one form or various forms to address transfer or discharge notices?

ANSWER:

42 CFR §483.15 (c)(3)(i) only states the written notice must in a language and manner the resident and, the resident's representative(s) understands. Key issues to consider would be language barriers, visual handicaps, and physical limitations.

12. QUESTION:

Do all transfer or discharge notices need to include both the Ombudsman Program, and Protection and Advocacy with respect to obtaining assistance for an appeal? Or should the notice be relevant, so a resident with a developmental disability or a mental illness has a pertinent notice which includes the mailing and email address, and the telephone number for protection and advocacy?

ANSWER:

No. 42 CFR §483.15 (c)(5) states all notices **must** include: The name, address (both the mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman:

Office of the State Long-Term Care Ombudsman
Aging Services Division
1237 W. Divide Ave, Suite 6
Bismarck, ND 58501-1208
701.328.4617 or 1.855.462.5465
dhsagingombud@nd.gov

If a resident has intellectual and developmental disabilities or related disabilities, or a mental disorder or related disabilities, the notice must also include the address (both the mailing and email), and telephone number of the Office of Protection and Advocacy:

Office of Protection and Advocacy
400 East Broadway, Suite 409
Bismarck, North Dakota 58501-4071
701.328.2950 or 1.800.472.2670
panda_intake@nd.gov (underscore between panda and intake)

13. QUESTION:

Does anyone, including a resident, resident representative, a Durable Power of Attorney for Health Care, or a Guardian, have to sign the transfer/discharge form?

ANSWER:

No. 42 CFR §483.15 (c)(3)(i) [F203] states, the resident and the resident's representative(s) must be notified of a transfer or discharge and the reasons for the move in writing and in a language and manner they understand. In addition, the facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

The Transfer and Discharge Notices developed in our state, requires the facility to document the names of who received the notice, and the dates when the notice was provided to those appropriate parties.

This requirement **does not** require a transfer or discharge notice be signed by a resident and/or the resident's representative(s). Resident representative is defined at 42 CFR §483.5.

The facility **does** need to demonstrate that the requirements in 42 CFR §483.15 Admission, Transfer, and Discharge Rights are met, however the facility has various options available to demonstrate compliance with these regulations. The provision that a resident and the resident's representative(s) must sign the notices would be a facility policy to verify that a transfer or discharge notice was given to the resident and the resident's representative(s).

14. QUESTION:

Can a facility transfer or discharge a resident due to a "significant change" in the resident's condition, or if a resident "refuses treatment?"

ANSWER:

The facility is prohibited from initiating a transfer or discharge unless at least one of the six criteria stated in 42 CFR §483.15 (c)(1) are met. The six criteria are:

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- 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;
- The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- The health of individuals in the facility would otherwise be endangered;

- 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; or
- The facility ceases to operate.

Therefore, unless a "significant change" in the resident's condition or unless a resident who is "refusing treatment" meets at least one of the six criteria listed above, the facility may not transfer or discharge a resident.

Furthermore, the facility may not transfer or discharge the resident while the appeal is pending, pursuant to §431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to §431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

15. QUESTION:

Does a transfer notice have to be given to a resident who is being transferred to a psychiatric unit in a hospital because their welfare cannot be met in the SNF/NF? When should this notice be given?

ANSWER:

- Yes. A facility is prohibited from initiating a transfer or discharge unless at least one of six criteria at 42 CFR §483.15 (c)(1)(i) are met. One of these criteria is if the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. If the facility initiates a transfer or discharge based on this reason or any of the other criteria outlined at section 42 CFR §483.15 (c)(1)(i) [F201], the facility must provide notice in accordance with the requirements at section 42 CFR §483.15 (c)(4) [F203]; and
- The timing of the notice depends upon specific circumstances regarding the resident condition. In cases where the 1) safety of individuals in the facility would be endangered, 2) the health of individuals in the facility would be endangered, 3) the resident's health improves sufficiently to allow a more immediate transfer or discharge, 4) an immediate transfer or discharge is required by the resident's urgent medical needs, or 5) a resident has not resided in the facility for 30 days; 42 CFR §483.15 (c)(4)(ii) states the notice may be made as soon as practicable before transfer or discharge.

16. QUESTION:

Does a transfer or discharge notice have to be given if it is the resident's choice to be discharged to their home, a board and care facility, or another nursing facility?

ANSWER:

Transfer and Discharge requirements apply when the facility **initiates** the transfer or discharge. The purposes of the requirements are to ensure that residents remain in the facility in the absence of any of the six criteria in 42 CFR §483.15 (c)(1)(i) [F201] and to inform residents of their rights to question the decision of a facility relating to their transfer or discharge. If a resident or a resident's representative **initiates** a transfer or discharge voluntarily, then these requirements do not apply.

17. QUESTION:

Clarify the difference between a resident's choice to be transferred or discharged, and a facility's choice to transfer or discharge a resident.

ANSWER:

A resident's choice to be transferred or discharged is when a resident or a resident's representative(s) **initiates** the transfer or discharge voluntarily. Transfer and discharge requirements do not apply in this circumstance. If there is documentation in the resident clinical record that the resident or resident's representative(s) **initiated** the transfer or discharge and is in agreement with the transfer or discharge, then this is sufficient.

A facility's choice to transfer or discharge a resident is when the facility **initiates** (i.e. starts the discussion about) the transfer or discharge. The facility is prohibited from initiating a transfer or discharge unless at least one of six criteria stated in 42 CFR §483.15 (c)(1)(i) [F201] are met. If the facility **initiates** a transfer or discharge based on at least one of the six criteria, the facility must provide notice in accordance with the requirements in 42 CFR §483.15 (c)(4) [F203].

- ✓ Initiated **voluntarily** (by a resident or a resident's representative(s) means **the facility has not influenced the decision to transfer or discharge in any way**. This applies to 'short term stay' rehabilitation residents as well.

18. QUESTION:

When does a facility not need to provide a notice of transfer or discharge?

ANSWER:

*N.D. Administrative Code 75-01-03-08.1 (4)(a) states a facility need not provide a notice if:

- The resident provides a clear written statement, signed by the resident, that the resident does not object to a proposed transfer or discharge; or
- The resident gives information that requires a transfer or discharge, and indicates that the resident understands that a transfer or discharge will result.

19. QUESTION:

What is the fair hearing process for involuntary transfer or discharge?

ANSWER:

42 CFR §483.15 (c)(5) [F203] states the written notice must include a statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request.

The Department of Human Services is implementing the federal requirement that the Medicaid agency provide a "fair hearing" for involuntary transfer or discharge appeals.

*ND Administrative Code 75-01-03-01(10) defines a "fair hearing" as an appeal hearing, established pursuant to federal regulation or law, that specifically requires the Department of Human Services to provide a dissatisfied claimant an opportunity for a hearing that meets the requirements for due process of law, namely notice and an opportunity to be heard.

One provision in the written notice is informing the resident where to appeal. All written requests for appeals must be sent to:

Appeals Supervisor
Department of Human Services
600 East Boulevard Avenue, Dept. 325
Bismarck, North Dakota 58505
dhslau@nd.gov
701.328.2311

20. QUESTION:

When a resident goes on therapeutic leave, does a discharge or transfer notice need to be given?

ANSWER:

No. A transfer or discharge notice does not need to be given when a resident goes on therapeutic leave.

21. QUESTION:

How many days does a resident and/or a resident's representative(s) have to appeal a transfer or discharge?

ANSWER:

*There are two provisions in North Dakota Administrative Code 75-01-03-08.1 (2) that address this question:

- A resident has thirty days after the date of issuance of a transfer or discharge notice to appeal.
- The first day of that thirty day period is the day after the date of issuance. The date of issuance is the day notice is delivered or mailed to the resident.

22. QUESTION:

Can a resident waive his/her right to an involuntary 30 day transfer or discharge notice?

ANSWER:

No. A resident cannot waive any of his/her rights under the regulations.

23. QUESTION:

Does a notice of transfer need to be provided to a resident and resident's representative(s), when a resident is going to receive outpatient services?

ANSWER:

A notice of transfer for hospitalization does not need to be provided when a resident is going to receive outpatient services if the resident is not staying overnight in the hospital.

- ✓ A notice of transfer does not need to be given for a 23 hour hold.

24. QUESTION:

When is both a written bed-hold notice, and a written transfer or discharge notice given?

ANSWER:

- Both a written bed-hold notice, and a written transfer notice is given only when a resident is hospitalized.
- ✓ The requirements for bed-hold do not apply for a Medicare only hospital based distinct part nursing facility or a swing bed unit.

25. QUESTION:

When is a written bed-hold policy given?

ANSWER:

The federal requirements at §483.15 (d) notice of bed-hold policy and return [F205] state:

(1) **Notice before transfer.** Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies:

- The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;
- The reserve bed payment policy in the state plan, under § 447.40 of this chapter, if any;
- The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (c)(5) of this section, permitting a resident to return; and
- The information specified in paragraph (c)(3) of this section [refer to F203] which relates to Notice of Transfer and Discharge.

(2) **Bed-hold notice upon transfer.** At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident **and** the resident representative written notice which specifies the duration of the bed-hold policy described in paragraph (e)(1) of this section [refer to F206].

The nursing facility's bed-hold policies apply to all residents.

Please Note: as stated above, two notices related to the facility's bed-hold policies are required to be issued.

- The first notice of bed-hold policies should be given well in advance of any transfer. This is so the resident and resident's representative(s) is aware, well in advance, of the bed-hold and return policy. However, reissuance of the first notice would be required if the bed-hold policy under the State plan or the facility's policy were to change.

- The second notice, which specifies the duration of the bed-hold policy, must be issued at the time of transfer.

26. QUESTION:

If a resident is hospitalized or goes on therapeutic leave, can a facility say they will not allow the resident to return to the facility due to the fact they cannot provide the services this resident needs?

ANSWER:

No. If a resident is hospitalized or goes on therapeutic leave, the resident must be allowed to return to the facility as specified under bed-hold policy and readmission 42 CFR §483.15 (e)(1).

The federal requirements at §483.15 (e)(1) permitting residents to return to facility state:

A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.

- A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, returns to the facility to their previous room if available or 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 Medicare skilled nursing facility services or Medicaid nursing facility services.
- If the facility that determines that a resident who was transferred with an expectation of returning to the facility, cannot return to the facility, the facility must comply with the requirements of paragraph (c) as they apply to discharges [refer to F201 - F204].

Where the facility believes that one of the six criteria for transfer and discharge as stated in 42 CFR §483.15 (c)(1)(i) exist, the facility must provide the appropriate notice of discharge and fair hearing procedures so as to ensure that the resident's due process rights are not ignored. The facility cannot simply refuse to readmit the previously hospitalized resident.

The federal requirements at §483.15 (e)(2) state: readmission to a composite distinct part. When the facility to which a resident returns is a composite distinct part (as defined in § 483.5), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of return, the resident must be given the option to return to that location upon the first availability of a bed there.

*North Dakota Century Code Section 50-24.4-19, Prohibited Practices, states, in part:

- A nursing home is not eligible to receive medical assistance payments unless it refrains

from all of the following:

7. Refusing, for more than twenty-four hours, to accept a resident returning to the resident's same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.

8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.