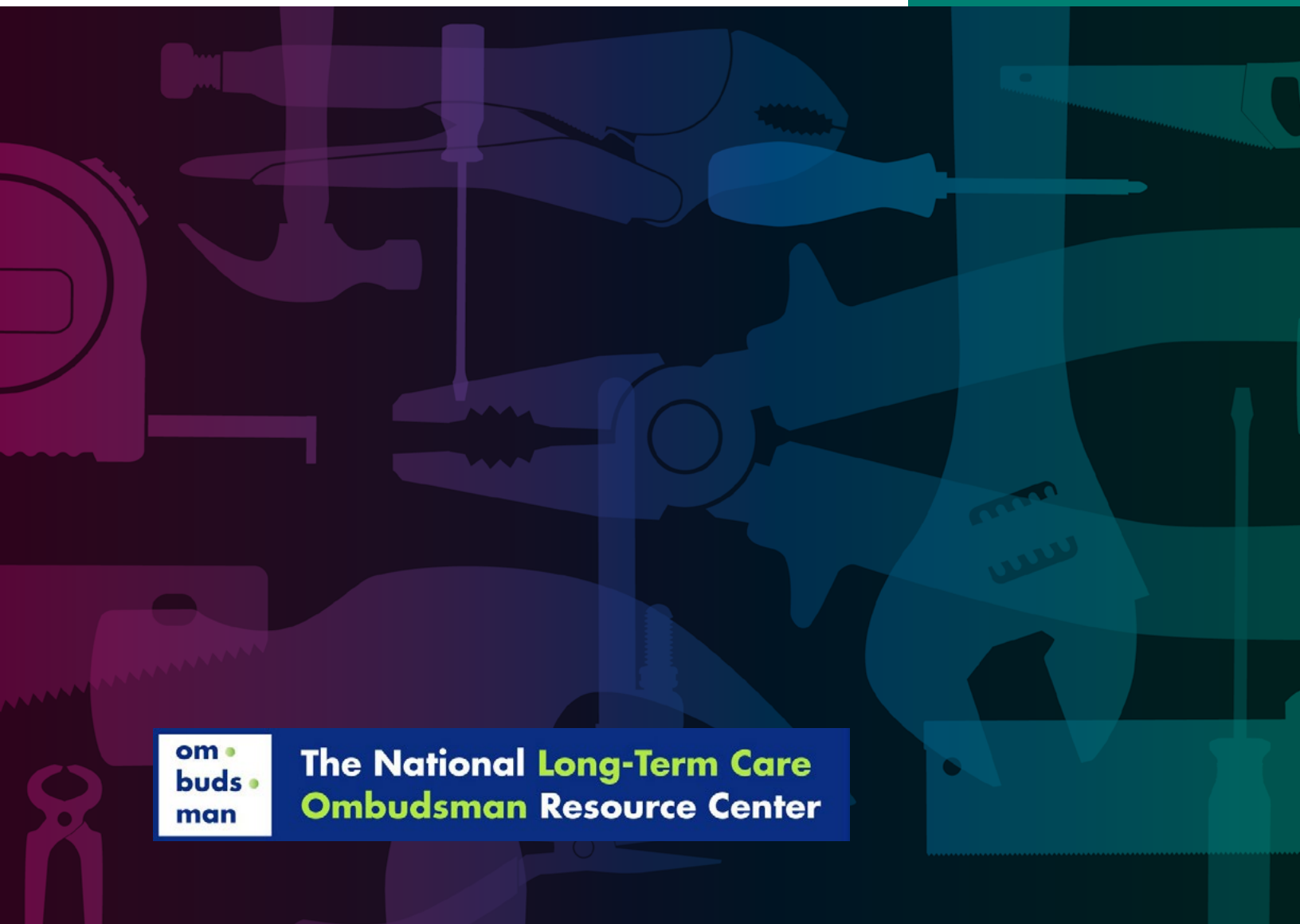
Enhancing Your Advocacy Toolbox

Protecting Residents from Nursing Facility-Initiated Discharges



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The National Long-Term Care Ombudsman Resource Center

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This project was supported, in part, by grant number 90OMRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.

Introduction

Complaints regarding nursing facility-initiated discharges have been the most common type of complaint received by the Long-Term Care Ombudsman program for the last nine years. In 2019, 10,508 of the 142,051 nursing facility complaints were about discharges.[1] According to federal guidance for surveyors, "facility-initiated discharge" is defined as "a transfer or discharge which the resident objects to, did not originate through a resident's verbal or written request, and/or is not in alignment with the resident's stated goals for care and preferences."[2] The purpose of this resource is to assist Ombudsman programs when advocating for residents facing a facility-initiated discharge.

This resource was developed as part of the *Ombudsman Learning Collaborative to Protect Residents Against Nursing Facility-Initiated Discharges* project funded by the Administration for Community Living (ACL). Seven state Ombudsman programs representing six of the ten ACL regions participated in the project. The states were: District of Columbia, Louisiana, Mississippi, Nevada, Ohio, Oklahoma, and Pennsylvania.

Common terms used throughout this resource:

- "**Appeal**" may also be known as a request for hearing.
- "**Appeal hearing**" or "**hearing**" may also be known as administrative fair hearing or fair hearing.
- "**Ombudsman**" is used as a generic term that may mean the State Ombudsman, a representative of the Office of the State Long-Term Care Ombudsman, or the Ombudsman program.
- "**Resident**" is a term that may include the resident representative when the situation warrants following the direction of the resident's representative, such as if the resident is unable to communicate informed consent or if the resident has given consent to follow the direction of the resident representative. This resource focuses on nursing facility-initiated discharges, so "resident" refers to individuals living in nursing facilities, not residential care communities or other settings.

How to Use This Resource

This resource blends pertinent federal nursing home requirements and surveyor guidance with action steps for Ombudsmen to consider when working with residents in a facility-initiated transfer or discharge situation.

Section 1

The first section is a general overview of the State Long-Term Care Ombudsman Programs Final Rule, federal nursing facility regulations, definitions, and regulatory tools as they pertain to transfers and discharges.

Section 2

The second section focuses on Ombudsman advocacy considerations while spelling out the direct federal requirement for each element related to transfer or discharge. The advocacy considerations are in the form of "**what if**" questions after the federal regulation is explained (look for the What if icon). The "what if" questions are intended to help you get started with your plan of action.

Section 3

The third section includes complaint investigation key points, a basic discharge complaint investigation process checklist, and resolution strategies and regulatory tools for common discharge reasons.

[1]NORC. 2019 National Ombudsman Reporting System (NORS) data. https://ltcombudsman.org/omb_support/nors/nors-data
[2]CMS. State Operations Manual, Appendix PP. Guidance to Surveyors for Long-Term Care Facilities. F622.
https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Appendix-PP-State-Operations-Manual.pdf

Section 4

The fourth section describes the appeal process and the Ombudsman role before, during, and after the hearing.

Section 5

The fifth section provides a brief closing and additional resources.

Section 6

The final section is the appendix with charts with resolution strategies, action steps, and the legal basis to address common discharge reasons.

This resource is based on federal requirements for certified nursing facilities. In addition to understanding these requirements, Ombudsman programs need a strong working knowledge of their state rules and regulations and Ombudsman program policies. Additionally, Ombudsman programs vary in communication approaches with state agencies and resources, so it is important to understand the particulars within your state as you review this material. Consult your supervisor and/or State Ombudsman if you have questions about your program policies and procedures.

For the advocacy considerations in this resource, assume that the resident, or their representative as appropriate, gave consent for you to investigate the complaint.

How to Navigate this Resource

This resource is interactive. Clickable links appear in **green** or **magenta** underlined text, and will take you to linked websites or other sections within the document. Additionally, use the blue buttons at the bottom right of each page as follows:

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SECTION 1

General Overview

Role of the Long-Term Care Ombudsman Program

The Older Americans Act (OAA) and State Long-Term Care Ombudsman Programs Final Rule (LTCOP Rule) outline the responsibilities of the State Ombudsman and representatives of the Office, clearly stating that the primary role of the Long-Term Care Ombudsman Program is to serve as resident advocates.[3] Ombudsman programs are charged with serving as the resident advocate in response to individual complaints as well as representing resident concerns on a systems level. Ombudsman programs also share information about residents' rights and how to ensure quality of life and care with residents, resident representatives, facility staff, and the public.

As nursing facility-initiated discharges continue to impact thousands of residents each year, the Ombudsman program plays a critical role in advocating for a resident's right to stay in their home. Residents have a right to stay in their facility once admitted. According to the Centers for Medicare & Medicaid Services (CMS) State Operations Manual, Appendix PP, "section 483.15(c)(1)(i) provides that facilities 'must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless…' This means that once admitted, for most residents, the facility becomes their home. Facilities are required to determine their capacity and capability to care for the individuals they admit. Therefore, facilities should not admit residents whose needs they cannot meet based on the Facility Assessment."[4]

To effectively investigate and resolve facility-initiated discharge complaints, Ombudsman programs should be familiar with federal nursing facility requirements, surveyor guidance, state nursing facility requirements, Ombudsman program policies, and their state administrative fair hearings process. Ombudsman programs also need strong relationships with state survey agencies to coordinate communication and to facilitate referrals.

Pertinent Federal Nursing Facility Requirements

The federal nursing facility regulations, 42 U.S.C. Part 483, were amended in 2016 and include significant changes to admission, transfer, and discharge rights (§483.15). Major changes include definitions of transfer and discharge, a resident's right to stay in the facility while appealing a discharge notice, notification requirements, and documentation requirements. The definitions and requirements below are excerpts from federal nursing facility requirements and federal guidance to surveyors (see links in the Regulatory Tools section).

[3]Older Americans Act of 1965. Section 712 (a)(3)(A) https://acl.gov/sites/default/files/about-acl/2020-04/Older%20Americans%20Act%20Of%201965%20as%20amended%20by%20Public%20Law%20116-131%20on%203-25-2020.pdf; State Long-Term Care Ombudsman Programs Final Rule https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol4/xml/CFR-2017-title45-vol4-part1324.xml.

[4]CMS. State Operations Manual, Appendix PP. Guidance to Surveyors for Long-Term Care Facilities. F600, F838 https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Appendix-PP-State-Operations-Manual.pdf

DEFINITIONS

Bed-hold – Holding or reserving a resident's bed while the resident is absent from the facility for therapeutic leave or hospitalization.

Therapeutic leave – Absences for purposes other than required hospitalization.

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.

Facility-initiated transfer or discharge – A transfer or discharge which the resident objects to, did not originate through a resident's verbal or written request, and/or is not in alignment with the resident's stated goals for care and preferences.

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 facility. Leaving the facility does not include the general expression of a desire to return home or the elopement of residents with cognitive impairment.

Assessing if the Discharge is Resident-Initiated

Nursing facilities are required to send copies of all facility-initiated notices to the Ombudsman program. CMS reiterates the important role of the Ombudsman program by stating the following in the State Operations Manual, Appendix PP, "the intent of sending copies of the notice to a representative of the Office of the State LTC Ombudsman is to provide added protection to residents from being inappropriately discharged, provide residents with access to an advocate who can inform them of their options and rights, and to ensure that the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges. The medical record must contain evidence that the notice was sent to the Ombudsman."

Nursing facilities are not required to send resident-initiated discharges to the Ombudsman program. However, facilities may determine a discharge is resident-initiated rather than facility-initiated. In those cases, you may receive a complaint about a discharge, but not an actual notice, because the facility is presenting the discharge as resident-initiated. The chart below demonstrates common examples of what may be or may not be resident-initiated.

The State Operations Manual offers the following guidance to state surveyors about these discharges, stating "discharges following completion of skilled rehabilitation may not always be a resident-initiated discharge. In cases where the resident may not object to the discharge, or has not appealed it, the discharge could still be involuntary and must meet all requirements of [the regulations]."[5] For more information, refer to the **chart** *for "The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility."*

Is it a Resident-Initiated Discharge?

Examples below in the "yes" column *could* be resident-initiated discharges and examples under the "no" column would not be considered resident-initiated discharges. Facility-initiated discharges must meet all discharge requirements under §483.15(c).

Yes	No
• A resident expresses a desire to go home and works with the facility to develop a discharge plan to go home. • The care plan team develops goals and objectives based on the resident's desire to go to a residential care community. • A resident asks to be discharged to a facility closer to his family. • A resident asks to be discharged after completing skilled rehabilitation. • A resident insists on going home against medical advice after being counseled on the potential consequences.	• A resident becomes frustrated and states she would rather live on the street than in the facility. • A resident with a cognitive impairment elopes. • A resident initially came to the facility for skilled rehabilitation and has used their Medicare days, but is not ready to go home. • A resident exceeds the number of days allowable in the facility's bed hold policy. • A facility says they cannot meet the resident's needs so the family should look for another facility and the family agrees to do so. • A resident's child wants to move the resident out of the facility, but the resident does not want to leave.

[5]CMS. State Operations Manual, Appendix PP. Guidance to Surveyors for Long-Term Care Facilities. F622. https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Appendix-PP-State-Operations-Manual.pdf

Regulatory Tools

By understanding the nursing home regulations and guidance, Ombudsmen are in a better position to advocate for quality, individualized care, and to advocate against discharges when speaking with facility staff. Ombudsmen are also better equipped to investigate complaints, provide effective options for complaint resolution, and work with the resident to develop a plan of action related to the root of the problem and the resident's anticipated resolution. Informed Ombudsmen educate residents and family members about facility regulations in basic terms to clarify facility requirements and residents' rights.

Federal Long-Term Care Facility Regulations

Requirements that Long-Term Care Facilities must meet to participate in the Medicare and Medicaid programs.

Use the federal regulations to gain a basic understanding of the requirements for all certified long-term care facilities.

Centers for Medicare & Medicaid Services (CMS) State Operations Manual (SOM) Appendix PP – Guidance to Surveyors for Long Term Care Facilities

Also known as Interpretive Guidelines, Interpretive Guidance, or the SOM. The State Operations Manual (SOM) Appendix PP is written guidance from CMS to the state survey agencies when conducting annual surveys and complaint investigations to determine compliance with federal regulations and how to cite for deficient practices under specific tags (also known as F-Tags, such as F622 for citations regarding Transfer and Discharge). Included in Appendix PP are:

A. Investigative Protocols, Procedures, Probes: Assist surveyors with actions to take during a survey.

B. Key Elements of Noncompliance: Main points for surveyors to determine a facility's failure to comply with federal regulations.

Use Appendix PP to gain a better understanding of the meaning, or intent, of the federal regulations. Appendix PP is often used by Ombudsmen to clarify the requirements of certified long-term care facilities.

Critical Element Pathways

Some requirements have Critical Element Pathways to direct surveyors to identify points to observe, questions to ask, and records to review. Some Critical Element Pathways that may be relevant to transfers and discharges include:

A. Discharge Critical Element Pathway

B. Dementia Care Critical Element Pathway

C. Behavioral and Emotional Status Critical Element Pathway

D. Resident Assessment Critical Element Pathway

E. Hospitalization Critical Element Pathway

F. Preadmission Screening and Resident Review Critical Element Pathway

G. Sufficient and Competent Nurse Staffing Review

Use the Critical Element Pathways to gain a better understanding of what practices the facility should have in place applicable to the specific pathway topic. The Pathways also include the corresponding F-Tag. Watch the **recording** for the *Advocacy Tools and Successful Practices to Protect Residents from Nursing Facility-Initiated Discharges* webinar and review the webinar materials available on the National Long-Term Care Ombudsman Resource Center (NORC) **website** for examples of how to use the Critical Element Pathways in complaint investigation and resolution.

SECTION 2

Federal Requirements and Advocacy Considerations

Federal Requirements

Federal regulations prohibit nursing facilities from transferring or discharging a resident unless the facility can establish that one of the six permissible reasons for transfer or discharge exists. Although a facility may assert one of the six reasons to discharge a resident, it may still be an inappropriate discharge. Ombudsmen can use the regulations and guidance to surveyors to advocate on behalf of residents facing an improper discharge. This section provides Ombudsmen with advocacy tips to address when facilities do not follow the requirements.

Six Reasons for Facility-Initiated Transfer or Discharge §483.15(c)(1)(i)

Per federal requirements (42 CFR Part 483) nursing facilities must permit each resident to remain in the facility, and not transfer or discharge unless:

1. The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.
2. The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
3. The resident's clinical or behavioral status (or condition) endangers the safety of individuals in the facility.
4. The resident's clinical or behavioral status (or condition) otherwise endangers the health of individuals in the facility.
5. The resident has failed, after reasonable and appropriate notice to pay, or have paid under Medicare or Medicaid, for his or her stay at the facility. NOTE: The facility may not discharge a resident for non-payment if the paperwork for payment, such as a Medicaid application, has been submitted and is pending.
6. The facility ceases to operate.

This resource does not include information about facility closures. For more information about the ombudsman's role during a closure and requirements during a closure, go to: https://ltcombudsman.org/issues/nursing-home-closures.

Contents of the Notice §483.15(c)(5)

Not all states have standardized facility-initiated transfer or discharge forms. Become familiar with your state's form, if applicable. However, all facilities must include the following information in the contents of the notice:

1. The reason for transfer or discharge.
2. The effective date of the transfer or discharge.
3. The location to which the resident is to be transferred or discharged.
4. A statement of the resident's appeal rights, including the name, mailing and email address, and phone number of the entity which receives such requests.
5. Information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request.
6. The name, mailing and email address, and phone number for the Office of the State Long-Term Care Ombudsman.

7. For residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and phone 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.).
8. For 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.

What if *What if the notice does not contain the required information or the information is incorrect?*

You can:

- Ask or request the facility to rescind the notice since it does not include the required information; and
- Request the facility reissue the notice with the required information which may restart the 30-day time frame.

If the facility refuses, you can:

- Discuss with the resident the option of filing a complaint with the survey agency and assist the resident with filing a complaint as needed; and/or
- File an appeal hearing and argue to have the discharge notice dismissed since the facility did not follow notification requirements.

Timing of the Notice §483.15(c)(4)

30-Days

Facilities are required to provide a 30-day notice of a facility-initiated discharge to the resident, the resident's representative, and the Ombudsman at the same time. The information included in the notice must be in a language and manner that the resident and the representative understand.

As Soon as Practicable

Notice must be made to the resident, resident's representative, and the Ombudsman as soon as practicable when the safety or health of the individuals in the facility is endangered, if the resident needs urgent medical attention, if the resident's health improves sufficiently, or the resident has not resided in the facility for 30 days.

Monthly

Nursing homes must send copies of notices for emergency transfers to the Ombudsman program. However, they may send notice when practicable, such as a list of residents on a monthly basis.

What if *What if the facility does not issue a 30-day notice and still proceeds with discharging a resident against the resident's wishes?*

You can:

- Request the facility cease all discharge actions, or, if the facility is determined to continue with discharge actions,
  - Educate the facility on facility-initiated discharge notification requirements and the process for sending copies of discharges notices to the Ombudsman program.
  - Request the facility issue a 30-day notice to all required parties.
  - Contact the survey agency to ask them to contact the facility to remind them of the regulations.
  - File for an appeal hearing.
  - File a complaint with the survey agency indicating that the facility failed to provide notice to the required parties.

What if the facility is not providing notices?

- If you are a state Ombudsman, contact your State Survey Agency, the individual providers, and the provider associations to inform them of your state's notification requirements and the federal regulations on ombudsman notification.
- If you are a representative (e.g., local/regional ombudsman) consult with your supervisor and/or state Ombudsman:
  - when you are unsure of your state's process for receiving notices or,
  - to determine how to best inform the state survey agency of the facilities that are not sending copies of notices to the Ombudsman program (e.g., sending a monthly list of facilities that are not complying, or filing complaints with the survey agency).

Location to Which the Resident is Transferred or Discharged §483.21(c)(1)

Federal regulation §483.21(c)(1) Discharge Planning Process is intended to ensure that facilities have a discharge process in place that addresses residents' goals, needs, caregiver support, and appropriate referrals. The process should involve the resident and the resident's representative, when applicable. Additionally, the State Operations Manual Appendix PP states that, "the facility's discharge planning process must be consistent with the discharge rights set forth at 483.15(b) as applicable," and "discharge planning must identify the discharge destination, and ensure it meets the resident's health and safety needs, as well as preferences." Discharge planning should also include consideration of a resident's caregiver's capacity to meet the needs of the resident [§483.21(c)(1)(iv)].

When reviewing the 30-day notice, look for the location to which the resident is to be transferred or discharged. If the location is left blank, will not meet the needs of the resident, is unsafe, or is inappropriate, the Ombudsman can challenge the notice. Examples of unsafe, inappropriate locations include:

- a homeless shelter,
- the street,
- a motel, or
- a home in the community without proper services or caregivers.

What if the location on the notice is missing, unsafe, or inappropriate?

You can:

- Advocate for the facility to rescind the notice.
- Request the facility reissue the notice to ensure a safe and orderly discharge with orientation to discharge location that will meet the resident's needs, which would restart the 30-day time frame.
- Contact the survey agency to file a complaint against the facility, stressing the level of harm, both psychosocial and physical, the resident may be (or could potentially) be experiencing.
- Contact the survey agency to ask them to inform the facility of the regulations.
- File an appeal hearing and argue to have the discharge notice dismissed due to a lack of required discharge planning and a safe, discharge location that will meet the resident's needs.

The Louisiana Ombudsman program advocated on behalf of a resident receiving hospices services. The discharge notice was for non-payment (owing just over $2,000) and the location on the notice was a homeless shelter. The case went to hearing and the resident, represented by a legal assistance provider, prevailed due to the nursing facility's inability to prove it could provide a safe and orderly discharge.

Facility Documentation §483.15(c)(2)

Reasons 1-5

When the facility transfers or discharges a resident under any of the circumstances specified in numbers 1-5, the facility must ensure the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care provider.

Reasons 1-4

Physician documentation is required when the transfer or discharge is for reasons 1-4 above. However, for reasons 1-2 the **resident's physician** must document in the resident's medical record:

- the specific need(s) that cannot be met (in the current facility),
- the facility's attempts to meet the resident's needs; and
- the services available at the receiving facility to meet the resident's needs.

What if *What if the facility did not document per federal regulations?*

You can:

- Ask the facility to rescind the notice, since it did not properly document the required information; and
- Request the facility reissue the notice after proper documentation has been included in the medical record, which may restart the 30-day timeframe.

If the facility refuses to reissue the notice, you can:

- Discuss with the resident the option of filing a complaint with the survey agency and assist the resident with filing a complaint; and/or
- File an appeal and argue to have the discharge dismissed since the facility did not follow documentation requirements.

Changes to the Notice §483.15(c)(6)

If information in the notice changes, the facility must update the recipients of the notice as soon as practicable with the new information to ensure that residents and their representatives are aware and can respond appropriately.

The CMS State Operations Manual, Appendix PP, states "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, in order to provide 30-day advance notification." An Ombudsman could make an argument that any change in the notice is significant and could request a new notice be issued, thus allowing more time for the resident to prepare for the hearing and/or discharge.

What if *What if the facility makes a significant change to the notice, but refuses to restart the 30-day timeframe?*

You can:

- Inform the facility that they must reissue the notice which would restart the 30-day time frame.
- Discuss with the resident the option of filing a complaint with the survey agency and assist the resident with filing a complaint.
- File an appeal hearing and argue to have the discharge dismissed since the facility did not follow notification requirements.

When a Resident is Hospitalized

Bed-Hold §483.15(e)

Bed-hold is simply reserving a resident's bed while the resident is absent from the facility for therapeutic leave or hospitalization. All certified nursing facilities are required to have a bed-hold policy. The bed-hold policy must include language about how the facility will allow residents to return following hospitalization or therapeutic leave, even if the leave exceeds the bed-hold period allowed by the state. The policy must also address how residents who are on Medicare or who pay privately may pay to reserve their bed.

States vary in payment and duration of bed-holds.[6] Federal regulations do not require states to pay nursing facilities for holding beds while the resident is away from the facility. In addition, facilities are required to provide written information about the bed-hold policy to residents, regardless of payor source, prior to, and upon transfer for such absences.

Therefore, facilities are likely to share the notice of bed-hold policy for the first time at admission along with other facility policies and notification of residents' rights. However, the second notice must be provided to the resident, and if applicable the resident's representative, at the time of transfer, or in cases of emergency transfer, within 24 hours.

Additionally, when the resident has exceeded the bed-hold period under the State Plan, §483.15 (e)(1)(i) requires facilities have a bed-hold policy that permits residents to return to the facility immediately to their previous room if available or, if not, the first available bed in a semi-private room under the following conditions:

- the resident still requires the services of the facility; and
- is eligible for Medicare skilled nursing facility or Medicaid nursing facility services.

The facility must permit Medicaid-eligible residents to return to their previous room if available or, if not, the first available bed even if the resident has an outstanding Medicaid balance.

What if the facility did not give the resident a copy of the bed-hold policy?

You can:

- Speak to the facility about the requirements and ask to readmit.
- Use this as an argument during the appeal hearing.
- File a complaint with the survey agency indicating that the facility failed to provide the bed-hold policy to the required parties.

Emergent Transfers to Acute Care §483.15(e)(1)(ii)

According to CMS State Operations Manual, Appendix PP, F622, "Residents who are sent emergently to the hospital are considered facility-initiated transfers because the resident's return is generally expected. Residents who are sent to the emergency room, must be permitted to return to the facility, unless the resident meets one of the criteria under which the facility can initiate discharge. In a situation where the facility initiates a discharge while the resident is in the hospital following an emergency transfer, the facility must have evidence that the resident's status is not based on his or her condition at the time of transfer."

[6]NORC. Medicaid Bed Hold Policies by State. April 2019. https://ltcombudsman.org/uploads/files/support/BedHoldPolicy_by_State_2019.pdf

What if the facility transfers a resident to the hospital, refuses to take them back, and does not issue a notice of discharge?

This is considered a discharge and the facility is required to follow the regulation for facility-initiated discharges.

You can:

- Reach out to the facility to make sure they understand their responsibilities for readmitting the resident and providing proper discharge notification according to federal regulations.
- Ask the survey agency to speak with the facility about applicable regulations and the resident's right to return.
- File a complaint with the survey agency indicating that the facility failed to provide notice to the required parties.
- Speak with the hospital social worker or discharge planner to explain residents' rights and facility requirements, including the resident's right to return to the facility.
- Explain the hospital's option to file a complaint with the survey agency.

Discharge Pending an Appeal §483.15(c)(1)(ii)

1. While in the Hospital or Mental/Behavioral Health Facility

If the resident, or their representative, appeals the discharge while in a hospital or mental/behavioral health facility, the nursing facility must allow the resident to return pending their appeal, unless there is evidence that the facility cannot meet the resident's needs, or the resident's return would pose a danger to the health or safety of the resident or others in the facility.

A facility's determination to not permit a resident to return while an appeal of the resident's discharge is pending must not be based on the resident's condition when originally transferred to the hospital.

What if the facility refuses to accept the resident back from the hospital or mental/behavioral health facility?

You can:

- Determine whether the resident is to be discharged to a nursing facility that provides the same services and level of care as the original nursing facility.
- Determine if the facility has assessed the resident after receiving treatment at the hospital.
- Find out if the facility gave the resident a copy of the bed-hold policy.
- Check the resident's medical record at the facility to see if appropriate documentation has been made to determine if the resident still requires services of the facility and if the facility has obtained an accurate status of the resident's current condition, what treatments, medications, and services were provided at the hospital.
- Find out if the resident needs additional services and supports for a successful return.
- Contact the hospital social worker to further investigate the resident's ability to return to the facility and what treatments, medications, and services were provided at the hospital.
- Determine if a Preadmission Screening and Resident Review (PASRR) screen has been completed. For information about PASRR visit these websites: PASRR (Medicaid.gov), PASRR Technical Assistance Center, and CMS State Operations Manual, Appendix PP [(§483.20(k)(4)].

Once it has been determined that returning to the facility is an appropriate placement and if the facility continues to refuse to take the resident back, consider:

- Reminding the facility of the resident's right to return.
- Asking the survey agency to speak with the facility about applicable regulations and the resident's right to return.
- Filing a complaint with the survey agency.
- Referring the resident to legal services or informing the resident's attorney (when applicable) of the facility's refusal to allow the resident to return.
- Suggest to the hospital that their legal counsel speak with the facility.

2. While in the Current Facility § 431.230, § 431.220(a)(3)

If the resident, or their representative, appeals the discharge while the resident is still in the nursing facility, the facility may not transfer or discharge the resident before a final decision is made after the appeal hearing process. However, if the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility, the facility may transfer or discharge the resident prior to an appeal hearing decision. The facility is required to document the danger that failure to transfer or discharge would pose.

What if the facility attempts to transfer or discharge the resident prior to a final decision regarding their appeal?

You can:

- Determine if the transfer or discharge is due to the resident endangering the health or safety of themselves or others.
- Check the resident's medical record for appropriate documentation.
- Check the resident's medical record to determine if the facility has taken appropriate steps to address the safety issue before turning to discharge.
- Remind the facility of the resident's right to remain in the facility.
- Ask the survey agency to speak with the facility about applicable regulations and the resident's right to remain in the facility.
- File a complaint with the survey agency.
- Refer the resident to legal services or inform the resident's attorney (when applicable) of the facility's refusal to allow the resident to remain in the facility.

3. While Appealing a Denied Medicaid Application §483.15(c)(1)(ii)

If a resident's initial Medicaid application has been denied and the resident has appealed the denial, the resident cannot be discharged for nonpayment because the resident is not considered to be in a non-payment status. This instance is similar to the reason that residents cannot be discharged for non-payment if they are in a Medicaid pending status.

What if the facility attempts to discharge the resident for nonpayment prior to a decision from Medicaid?

You can:

- Notify the facility that the resident is not in nonpayment status.
- Ask the survey agency to speak with the facility about applicable regulations and the resident's right to return.
- File a complaint with the survey agency.

Orientation for Transfer or Discharge §483.15(c)(7)

Whether the transfer or discharge is facility-initiated or resident-initiated, facilities are responsible for ensuring a safe and orderly transfer or discharge. When working with residents on transfer and discharge concerns, ombudsmen can identify if the facility has failed to provide proper orientation during the transfer or discharge.

According to federal regulation [§483.15(c)(7)], nursing facilities are required to provide and document sufficient orientation and preparation to ensure a safe and orderly transfer or discharge. Sufficient preparation and orientation mean the facility informs the resident where he or she is going and takes steps to minimize anxiety. The form and manner of this orientation and preparation must take into consideration factors that may affect the resident's ability to understand, such as educational level, language and/or communication barriers, and physical and mental impairments.

Orientation in this manner does not specifically refer to the requirements under §483.21(c) for discharge planning but reflects actions the facility must demonstrate and document to prepare a resident for a more emergent situation such as a transfer to the emergency room or a therapeutic leave. Orientation is also required for an immediate discharge where complete discharge planning is not possible.

Examples of how a facility may provide orientation for transfer or discharge include:

- Explaining to a resident where they are going and why.
- Explaining to the resident when the facility expects them back (for transfers).
- Reassuring the resident that their belongings will be safe at the facility until they return or will be sent with the resident, or the resident's representative, to their new location.
- Including the resident's representative in the orientation to ease the resident's anxiety.

What if *What if the facility did not properly prepare and orient the resident for transfer or discharge?*

You can:

- Review the resident's records to see if the facility documented both the orientation and the resident's understanding of the transfer or discharge.
- Determine if there is anything that could still be done to minimize the resident's anxiety about the transfer or discharge and if those actions should be completed by the previous facility or if someone in the new location can assist with this matter.
- Contact the current facility to address the unmet requirement.
- File a complaint with the survey agency indicating the facility's failure to meet the requirements and the negative effects the transfer or discharge had on the resident.

SECTION 3

Complaint Investigation Key Points and Strategies

Complaint Investigation Key Points

While each state has their own policies and procedures for managing and responding to transfer and discharge notices, all Ombudsman programs investigate complaints regarding discharge when a resident requests Ombudsman program assistance in addressing their concern [see 1324.19(b) of the LTCOP Rule and NORC resources for additional information regarding complaint processing].

First, the Ombudsman educates and empowers the resident by explaining residents' rights and options. At a minimum:

- Shares information about the Ombudsman program and how it can help.
- Discusses residents' rights and facility responsibilities related to discharges.
- Explains possible advocacy steps (e.g., speaking with the facility staff about the discharge).
- Informs the resident of their right to appeal the notice and the hearing process.
- Explains the right to access legal counsel.
- Offers to assist the resident to resolve the complaint.

Complaint resolution strategies depend on individual circumstances of each resident and the reason for discharge. However, in all cases the Ombudsman should review the notice to identify issues with its contents and investigate the reason for discharge. Identifying unmet requirements will assist the Ombudsman in advocating for the facility to rescind the notice, reissue the notice, use as facts if reporting to the state survey agency, or argue to have the discharge dismissed during the appeal hearing.

If the resident provides consent for the Ombudsman program to investigate, the Ombudsman then develops an agreed upon plan of action with the resident and follows the wishes of the resident. The plan could include, but is not limited to:

- Permission to access the resident's records.
- Permission to speak with any necessary party to assist with preventing the discharge (facility staff, resident's representative, family members, attorney, state survey agency, Medicaid, etc.).
- Request for a care plan meeting and/or a request for a second opinion on a diagnosis.
- Appeal the discharge notice.
- Referral for legal assistance.

Basic Discharge Complaint Investigation Process Checklist

Regardless of the reason for discharge, ask the following questions:

These are basic questions to guide you through the initial investigation process. Not all questions apply in every situation. Your research and questions will grow more focused depending on the reason for discharge and resident direction for addressing the issue.

Resident Contact

Does the resident want to leave or stay in the facility? If the resident wants to stay and dispute the discharge, ask the following.

1. How long has the resident lived at the facility?
2. Does the resident understand the reason for the discharge?
    - What is their perspective on the reason?
3. Does the resident have a representative? Is it a legal representative (e.g., a Durable Power of Attorney, guardian/conservator) or an informal representative such as a friend or family member that supports them?
4. What is the source of payment for nursing home care (e.g., Medicare, Medicaid, private insurance, private pay, etc.)?
5. Does the resident have unmet needs, concerns, or complaints?
    - What are they?
    - What has the facility done to address the concerns?

Facility Contact

1. What is the reason for discharge?
2. Where is the resident being discharged?
    - Is this a safe, appropriate location?
3. What alternatives were considered to avoid the discharge?
4. Is the facility having difficulty meeting the resident's needs?
    - Why is the facility having this difficulty?
    - For how long?
    - What is the facility currently doing to meet the resident's needs?
5. Are there other concerns (e.g., issues with payment, possible financial exploitation)?

Interviews with pertinent parties will help you take next steps in your investigation such as interviewing staff or outside entities and gathering records.

The following checklist is intended to guide you through some basic complaint resolution steps. If the complaint is not readily resolved, then research additional strategies and steps by selecting on the specific reason for discharge links below.

Resolution Strategies

Regardless of the reason for discharge, review the transfer or discharge notice:

- ❑ Is it complete and in accordance with the notice requirements?
- ❑ Does it meet one of the six reasons for transfer or discharge?
- ❑ Is the location to which the resident is to be transferred or discharged safe and appropriate?
- ❑ Does the notice provide for 30 days? Or as soon as practicable under certain circumstances?
- ❑ Is the notice in a language and manner that the resident understands?
- ❑ Did the Ombudsman program receive the notice at the same time as the resident?

Action Steps *(attempt one or all)*

Regardless of the reason for discharge, if the facility failed to have complete information, did not provide it in a language and manner that the resident understands or has incorrect information the Ombudsman can:

- ❑ Attempt to resolve the complaint 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 this will restart the 30-day period.
- ❑ Use any errors on the notice as evidence in an administrative hearing.
- ❑ Use errors in the notice as part of your complaint to the state survey agency.

Legal Basis

Regulation §483.15(c)(1)(i): Nursing facilities must permit each resident to remain in the facility, and not transfer or discharge the resident unless the transfer or discharge is for one of six reasons identified in the requirements.

Regulation §483.15(c)(5): Facilities must include specific information in the contents of the notice (e.g., reason for transfer or discharge, effective date of the transfer or discharge, the transfer or discharge location, statement of appeal rights, and more).

Regulation 483.15(c)(4): Facilities are required to provide a 30-day notice of a facility-initiated discharge to the resident, the resident's representative, and the Ombudsman at the same time. The information included in the notice must be in a language and manner that the resident and the representative understand. Notice must be made to the resident, resident's representative, and the Ombudsman as soon as practicable when the safety or health of the individuals in the facility is endangered, if the resident needs urgent medical attention, if the resident's health improves sufficiently, or the resident has not resided in the facility for 30 days.

Federal regulation §483.21(c)(1): Facilities must have a discharge process in place that addresses residents' goals, needs, caregiver support, and appropriate referrals. The process should involve the resident and the resident's representative, when applicable.

Resolution Strategies and Regulatory Tools for Common Discharge Reasons

For more resolution strategies and regulatory tools related to specific reasons for discharge, click on the reason for discharge to access the corresponding strategy chart or go to the Appendix at the end of this resource. The Basic Discharge Complaint Investigation Process Checklist is also available in the appendix as a separate document for download.

- Reason 1: *The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.*
- Reason 2: *The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.*
- Reason 3: *The resident's clinical or behavioral status (or condition) endangers the safety of individuals in the facility.*
- Reason 4: *The resident's clinical or behavioral status (or condition) otherwise endangers the health of individuals in the facility.*
- Reason 5: *The resident has failed to pay for (or to have paid under Medicare or Medicaid) his or her stay at the facility.*

SECTION 4

Appeal Hearings – 42 CFR Subpart E

Advocacy Before, During, and After Appeal Hearings

States must provide a system for residents of nursing facilities to appeal a transfer or discharge notice from a facility [42 CFR Subpart E §483.204]. It is important that ombudsmen understand their state appeal system and explain the process to the resident (or the resident's representative, if appropriate).

A part of the state system must include the resident's right to request a hearing to appeal a transfer or discharge when the resident believes the facility has erroneously determined the resident should be transferred or discharged [42 CFR § 431.220(a)(2)].

Before the Hearing

What is Your State's Appeal and Hearing Process?

Under federal Medicaid regulations, all states are required to have a process for appeals and fair hearings written in the State Plan [§431.200]. It is important to research and understand your state's fair hearings process to effectively advocate on behalf of a resident who has received a notice of transfer or discharge. States vary on which state agency will conduct the hearing and the timeframe allowed to request a hearing. States offer hearings in-person and/or telephonically. If the hearing is in-person, find out where those hearings are typically held. They could be held at the facility, a courthouse, or in another location.

Action Steps to Request a Hearing

- Review your specific state's process for residents to request a hearing, particularly:
  - the format of the request (phone, fax, email, etc.),
  - the time frame to submit the request for hearing,
  - where the request is to be submitted, and
  - confirmation that the request was received.
- Ensure the request for hearing form is completed and submitted per your state's requirements.

Who Can Represent a Resident? 42 CFR 431.206(b)(3)

Once a request for hearing has been submitted pursuant to your state's process, if the resident has not already decided who will represent him or her in the hearing, make sure you explain their right to have a representative at the hearing. Residents have a right to legal representation during the hearing, but an attorney is not required or automatically afforded to the resident. Residents have the right to choose from the following list to represent them in a hearing:

- The resident (residents have the right to act as their own representative during a hearing)
- Legal counsel
- A friend, relative, or another spokesperson
- An Ombudsman

Per the Older Americans Act, Ombudsmen shall "represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents." Therefore, if no legal representation is available to the resident and the Ombudsman is following the direction of the resident, the Ombudsman may represent the resident in an administrative hearing.

States vary in procedures for Ombudsman representation. If you are unsure about your role in hearings, consult with your State Ombudsman as some states have a process to follow or a specific form that must be completed for Ombudsman representation. It is important to note that regardless of who is representing the resident during a hearing, the Ombudsman can be an important member of the resident's advocacy team. Some Ombudsmen provide information as a witness during the hearings when attorneys represent residents, for example.

If the resident has determined that the Ombudsman will represent them in a hearing, follow the considerations and action steps below.

Questions to Consider Prior to the Hearing

- Can the resident attend the hearing in person?
- If the hearing is held in person, is the location accessible to the resident?
- If the hearing is held via phone, does the resident have difficulty hearing?
- Is there a video conference option?
- Who should be present with the resident to assist with any language or communication barriers?
- How and when should the Ombudsman present evidence ahead of time?
- Are there witnesses that could be called to strengthen the resident's case?

Action Steps Prior to the Hearing

- Explain the process to the resident in a factual and realistic manner and in a way in which the resident can understand.
- Gather facts to support the resident's case.
- Review documents such as:
  - Relevant regulatory sources (e.g., federal nursing facility regulations, CMS State Operations Manual Appendix PP, and the Critical Element Pathways) to identify transfer/discharge and other pertinent requirements that were not met.
  - The discharge notice to identify problems with the discharge notice contents.
  - The resident's medical record to identify any issues with the facility's discharge process, documentation, or with the reason for discharge. For example, check to see if the documentation met regulations as required in 483.15(c)(2).
  - Documents the facility will be using at the hearing.
  - Examples of hearings where residents prevailed.
- Determine if witnesses will be called and if so, prepare the witnesses with questions you will be asking.
- Consult with the Ombudsman program legal counsel or someone experienced with appeal hearings.
- Prepare a memo to submit at the hearing that fully articulates the arguments supporting the resident's case. The memo is helpful in case you are not able to address all important points during the hearing and it lays the groundwork for any future appeal.
- Ensure all facts you want to present during the hearing are ready to submit verbally or in writing.

If the resident is working with an attorney, seek permission from the resident to coordinate with the attorney during the hearing process. If the resident does not have an attorney, there are several legal entities that may represent residents who have received a notice of discharge.

It is important to know the difference between the legal entities prior to making a referral. Those include:

- **Legal Assistance Providers** – the provider under contract with the Area Agency on Aging required to deliver legal assistance to older individuals with social or economic need: https://acl.gov/programs/legal-help/legal-services-elderly-program.
- **State Protection and Advocacy Systems** – administered through ACL, Protection and Advocacy Systems work at the state level to protect individuals with intellectual and developmental disabilities and individuals with traumatic brain injury by empowering them and advocating on their behalf: https://acl.gov/programs/aging-and-disability-networks/state-protection-advocacy-systems.
- **Legal counsel for the Office of State Long-Term Care Ombudsman**
- **Ombudsman Staff Attorneys** – some states have attorneys who work for the Ombudsman program.
- **Legal Clinics** – a law school program that provides free legal services.
- **Pro Bono Attorneys** – private attorneys who take cases without charging the client.
- **Private Attorneys** – attorneys who will charge the resident to take the case.

During the Hearing

An Ombudsman's role does not change when representing a resident in a hearing. During the hearing, the Ombudsman will present the case, speak on behalf of the resident, or encourage the resident to speak on their own behalf. While there are some tasks during the hearing that Ombudsmen do not regularly do, such as cross-examine witnesses, Ombudsman are used to asking questions and presenting facts, pointing out regulations, and presenting the resident's side of the situation.

Federal Regulations Pertaining to Procedures of Fair Hearings [§431.230 - 431.246]

All hearings must be conducted at a "reasonable time, date, and place" and only after "adequate written notice of the hearing" and by an impartial official or another individual who has not been directly involved with the notice of discharge. A hearing officer may request to have an impartial medical assessment of the resident conducted at the state Medicaid agency's expense.

Residents have procedural rights during the hearing as explained in §431.242. Residents have the right to:

- Examine the documents and records the facility is using at the hearing prior to and during the hearing.
- Bring witnesses.
- Establish facts.
- Present an argument to stay in the facility.
- Question or dispute any testimony or evidence and to cross-examine adverse witnesses.
- Request an expedited fair hearing (§ 431.224 Expedited appeals).

All facts of the case must be submitted either verbally or in writing prior to or during the hearing for the administrative law judge to take into consideration for a recommendation. Evidence will not be allowed to be admitted after the hearing is over.

After the Hearing

Hearing decisions must be based only on evidence introduced at the hearing and all parties will receive the decision in writing. Federal regulations allow residents to stay in the facility until a decision is made: § 483.15(c)(ii) states that 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.

Even when residents prevail in a hearing, there may still be additional advocacy needed, especially if the facility refuses to follow the hearing decision. If a facility refuses to adhere to the hearing decision or readmit a resident from the hospital while waiting for an appeal hearing, with the resident's consent you may need to file a complaint with the state survey agency or seek an immediate court order. If pursuing legal remedies is the next step, it is critical to consult with a knowledgeable attorney for those options. As you can see in the examples below, Ombudsmen had to pursue additional action to get the facilities to take residents back after prevailing in the hearing.

If the hearing decision upholds the discharge, the nursing facility is still required to properly orient the resident for the discharge and ensure it is a safe and orderly discharge [§483.15(c)(7)].

Additionally, if the hearing decision upholds the discharge, per §431.245 the resident has the right to request a judicial review or rehearing (the process and terminology varies by state).

The following is an example of individual advocacy provided by the Nevada Ombudsman Program before, during, and after a hearing:

The program received a discharge notice for a resident who was transferred to a hospital for an acute medical need. The skilled nursing facility refused to take the resident back and provided a discharge letter to the resident at the hospital stating they could not meet his needs. The resident filed an appeal. However, the hospital discharged him to a homeless shelter. The resident subsequently went to another hospital and then a behavioral hospital, as he threatened suicide if he was sent to another homeless shelter. The Ombudsman program assisted the resident at the appeal hearing and the skilled nursing facility continued to argue that they could not meet his behavioral needs. The skilled nursing facility did not indicate on the discharge notice this was the reason for his discharge and this did not correlate to the acute need for his hospital transfer. The hearing officer ruled in favor of the resident and the administrator still refused to take the resident back. The administrator stated she would take the fine or whatever sanctions she would incur. After the hearing officer said the Administrator would be in violation of a court order, the administrator took the resident back.

In Ohio, the resident prevailed in the hearing and the nursing facility still refused to accept the resident back from the hospital:

An Ohio resident went to the hospital and the nursing facility refused readmission but did not send a discharge notice. The survey agency cited the facility, and the Ombudsman requested a hearing. The resident won the appeal. The nursing facility still refused readmission and issued a notice. The resident prevailed at a second hearing and the survey agency cited the facility again. The hospital transported the resident back to the nursing facility, but the facility refused admission and locked the door. Therefore, the Ombudsman could not get in to speak with the staff. The survey agency cited the facility again and fined the facility. The Ombudsman told the Administrator they were going to seek an injunction and ended up settling before going to court. The resident went back, and the facility had to pay a $500 fine for interference with the Ombudsman. The reduced fine (Civil Monetary Penalty or CMP) issued by the state survey agency was around $13,000.

SECTION 5

Closing and Additional Resources

Cases involving facility-initiated discharges are often complicated and require a significant amount of time investigating and researching. For additional information and examples, review the resources in the appendix for charts with resolution strategies, action steps, and regulatory tools for common discharge reasons.

Resources

National Center on Law and Elder Rights (NCLER)

https://ncler.acl.gov

National Long-Term Care Ombudsman Resource Center (NORC)

Transfer/Discharge Issue page: https://ltcombudsman.org/issues/transfer-discharge

Federal Nursing Home Regulations: https://ltcombudsman.org/library/fed_laws/federal-nursing-home-regulations

State Long-Term Care Ombudsman Programs Final Rule: https://ltcombudsman.org/library/fed_laws/ltcop-final-rule

Collaboration/Working with Other Agencies: https://ltcombudsman.org/omb_support/pm/Collaboration

Centers for Medicare & Medicaid Services (CMS) Nursing Homes

https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes

- Code of Federal Regulations – Requirements for Long-Term Care Facilities (Nursing Facilities)
- State Operations Manual (SOM) Appendix PP – Guidance to Surveyors for Long Term Care Facilities
- Critical Element Pathways (LTC Survey Pathways)

SECTION 6

Appendix

Basic Discharge Complaint Investigation Process Checklist

Common Discharge Reasons:

Reason 1: The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.

Reason 2: The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

Reason 3: The resident's clinical or behavioral status (or condition) endangers the safety of individuals in the facility.

Reason 4: The resident's clinical or behavioral status (or condition) otherwise endangers the health of individuals in the facility.

Reason 5: The resident has failed to pay for (or to have paid under Medicare or Medicaid) his or her stay at the facility.

Basic Discharge Complaint Investigation Process Checklist

Complaint Investigation Key Points

While each state has their own policies and procedures for managing and responding to transfer and discharge notices, all Ombudsman programs investigate complaints regarding discharge when a resident requests Ombudsman program assistance in addressing their concern [see 1324.19(b) of the LTCOP Rule and NORC resources for additional information regarding complaint processing].

First, the Ombudsman educates and empowers the resident by explaining residents' rights and options. At a minimum:

- Shares information about the Ombudsman program and how it can help.
- Discusses residents' rights and facility responsibilities related to discharges.
- Explains possible advocacy steps (e.g., speaking with the facility staff about the discharge).
- Informs the resident of their right to appeal the notice and the hearing process.
- Explains the right to access legal counsel.
- Offers to assist the resident to resolve the complaint.

Complaint resolution strategies depend on individual circumstances of each resident and the reason for discharge. However, in all cases the Ombudsman should review the notice to identify issues with its contents and investigate the reason for discharge. Identifying unmet requirements will assist the Ombudsman in advocating for the facility to rescind the notice, reissue the notice, use as facts if reporting to the state survey agency, or argue to have the discharge dismissed during the appeal hearing.

If the resident provides consent for the Ombudsman program to investigate, the Ombudsman then develops an agreed upon plan of action with the resident and follows the wishes of the resident. The plan could include, but is not limited to:

- Permission to access the resident's records.
- Permission to speak with any necessary party to assist with preventing the discharge (facility staff, resident's representative, family members, attorney, state survey agency, Medicaid, etc.).
- Request for a care plan meeting and/or a request for a second opinion on a diagnosis.
- Appealing the discharge notice.
- Referral for legal assistance.

Basic Discharge Complaint Investigation Process Checklist

Regardless of the reason for discharge, ask the following questions:

These are basic questions to guide you through the initial investigation process. Not all questions apply in every situation. Your research and questions will grow more focused depending on the reason for discharge and resident direction for addressing the issue.

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.
    a. How long has the resident lived at the facility?
    b. Does the resident understand the reason for the discharge?
        i. What is their perspective on the reason?
    c. Does the resident have a representative? Is it a legal representative (e.g., a Durable Power of Attorney, guardian/conservator) or an informal representative such as a friend or family member that supports them?
    d. What is the source of payment for nursing home care (e.g., Medicare, Medicaid, private insurance, private pay, etc.)?
    e. Does the resident have unmet needs, concerns, or complaints?
        i. What are they?
        ii. What has the facility done to address the concerns?

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

1. What is the reason for discharge?
2. Where is the resident being discharged?
    a. Is this a safe, appropriate location?
3. What alternatives were considered to avoid the discharge?
4. Is the facility having difficulty meeting the resident's needs?
    a. Why is the facility having this difficulty?
    b. For how long?
    c. What is the facility currently doing to meet the resident's needs?
5. Are there other concerns (e.g., issues with payment, possible financial exploitation)?

Interviews with pertinent parties will help you take next steps in your investigation such as interviewing staff or outside entities and gathering records.

The following checklist is intended to guide you through some basic complaint resolution steps. If the complaint is not readily resolved, then review additional strategies and steps in the five charts for specific discharge reasons.

Resolution Strategies

Regardless of the reason for discharge, review the transfer or discharge notice:

- ❑ Is it complete and in accordance with the notice requirements?
- ❑ Does it meet one of the six reasons for transfer or discharge?
- ❑ Is the location to which the resident is to be transferred or discharged safe and appropriate?
- ❑ Does the notice provide for 30 days? Or as soon as practicable under certain circumstances?
- ❑ Is the notice in a language and manner that the resident understands?
- ❑ Did the Ombudsman program receive the notice at the same time as the resident?

Action Steps *(attempt one or all)*

Regardless of the reason for discharge, if the facility failed to have complete information, did not provide it in a language and manner that the resident understands, or has incorrect information the Ombudsman can:

- ❑ Attempt to resolve the complaint 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 this will restart the 30-day period.
- ❑ Use any errors on the notice as evidence in an administrative hearing.
- ❑ Use errors in the notice as part of your complaint to the state survey agency.

Legal Basis

Regulation §483.15(c)(1)(i): Nursing facilities must permit each resident to remain in the facility, and not transfer or discharge the resident unless the transfer or discharge is for one of six reasons identified in the requirements.

Regulation §483.15(c)(5): Facilities must include specific information in the contents of the notice (e.g., reason for transfer or discharge, effective date of the transfer or discharge, the transfer or discharge location, statement of appeal rights, and more).

Regulation 483.15(c)(4): Facilities are required to provide a 30-day notice of a facility-initiated discharge to the resident, the resident's representative, and the Ombudsman at the same time. The information included in the notice must be in a language and manner that the resident and the representative understand. Notice must be made to the resident, resident's representative, and the Ombudsman as soon as practicable when the safety or health of the individuals in the facility is endangered, if the resident needs urgent medical attention, if the resident's health improves sufficiently, or the resident has not resided in the facility for 30 days.

Federal regulation §483.21(c)(1): Facilities must have a discharge process in place that addresses residents' goals, needs, caregiver support, and appropriate referrals. The process should involve the resident and the resident's representative, when applicable.

This project was supported, in part, by grant number 90OMRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.

REASON 1

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

- *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.*

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	Action Steps *(attempt one or all)*	Legal Basis
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.	❑ **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.	**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.

[1]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	Action Steps *(attempt one or all)*	Legal Basis
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.	❑ **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.	**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).
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.	❑ **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.	**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	Action Steps *(attempt one or all)*	Legal Basis
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.	❑ **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.	**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.
Sufficient Staffing. Review staffing levels to determine if the facility had sufficient staff to meet the needs of the resident.	❑ **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). *Continued on next page*	**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. *Continued on next page*

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Sufficient Staffing continued	❑ **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.	**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.

This project was supported, in part, by grant number 90OMRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.

REASON 2

The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

- *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.*

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?
2. Does the resident have necessary services set up at the location to where he or she will be discharged?
3. Does the resident have family or other support at the setting to where he or she will be discharged?
4. Has the resident's payor source stopped or threatened to stop payments?
5. If the facility has notified the resident that Medicare skilled coverage is ending, does the resident believe/want services to continue? Does the resident wish to appeal the termination of Medicare services?
6. Has the resident spoken to their doctor about their wishes/concerns?
7. Is the resident concerned about their safety at home? If yes, what are the concerns?
8. If applicable, does the resident want you to make a referral to a community social service agency for at home services or to a local contact agency for assistance with transitioning from the nursing home back to the community?

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

1. Does the resident have necessary services set up at the location to where he or she will be discharged?
2. If applicable, has the facility made a referral to the local contact agency for assistance with transitioning back to the community [4823.21(c)(1)(A)]?
3. Does the resident have family or other support at the location to where he or she will be discharged?
4. Has the resident's payor source stopped or threatened to stop payments?
5. Has the resident's doctor documented in the medical record that the resident no longer needs the services provided at the facility?
6. Is the administrator or designated staff member aware of any safety concerns at home? If yes, what are the concerns and how are they being addressed?
7. Is the facility following the discharge plan in the resident's records?

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	Action Steps *(attempt one or all)*	Legal Basis
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.	❑ **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 this 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.	**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.

[1]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	Action Steps *(attempt one or all)*	Legal Basis
Review Resident Records. Examine the resident's medical record to determine if the resident's physician has documented that the resident no longer needs the services of the facility. Review records to see if there is an appropriate discharge plan.	❑ **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.	**Regulation §483.15(c)(2):** 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. **Regulation §483.15(c)(2)(ii)(A):** The resident's attending physician must document that the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility. **Regulation §483.21(c)(1)(i)(v)(vi):** (i)The facility must ensure that the discharge needs of each resident are identified and result in the development of a discharge plan for each resident. (v) Involve the resident and resident representative in the development of the discharge plan and inform the resident and resident representative of the final plan. (vi) Address the resident's goals of care and treatment preferences. **Regulation §483.21(c)(1)(iv):** Consider caregiver/support person availability and the resident's or caregiver's/support person(s) capacity and capability to perform required care, as part of the identification of discharge needs. **Interpretive Guidelines:** Discharge planning must identify the discharge destination, and ensure it meets the resident's health and safety needs, as well as preferences.
Review Reasons Related to Medicare. Medicare coverage is not long term and only pays in full for 20 days of nursing facility care (usually for care related to recent hospitalization, such as rehabilitation), then the resident is required to pay a co-payment for up to 100 days of the nursing home stay. If the facility tells the resident they need to move out due to Medicare benefits, determine the specific reason (e.g., Medicare coverage ending, therapy ending due to lack of Medicare days, facility refuses to bill Medicare).	❑ **Attempt to Resolve with the Facility.** The resident can insist the facility submit a bill to Medicare and while Medicare reviews the bill the facility cannot charge the resident for what Medicare may pay. However, if Medicare refuses to pay the resident will be responsible for payment. It is important to ensure residents understand their rights and potential financial liability when deciding how to proceed. ❑ **File an Appeal.** If the discharge is due to Medicare days ending and the resident is not ready to return home, consider appealing to Medicare for additional coverage. A change in payment source is not one of the six reasons for discharge and a resident cannot be discharged while an appeal is pending. For additional advocacy tips if a resident is being discharged because his or her Medicare days are ending, review problems 12, 16 - 20 in Justice in Aging's "25 Common Nursing Home Problems and How to Resolve Them". *Continued on next page*	**Interpretive Guidelines:** Facilities must inform each resident in writing before or at admission, and periodically during their stay, such as when a change in coverage occurs, of the facility's available services and associated costs. **Medicare Resources** *Rights and Protections for Everyone with Medicare* https://www.medicare.gov/claims-appeals/your-medicare-rights/rights-protections-for-everyone-with-medicare **Getting a Fast Appeal** https://www.medicare.gov/claims-appeals/your-right-to-a-fast-appeal/getting-a-fast-appeal-from-non-hospital-settings **Appendix PP Page 58:** For residents who receive(d) Medicare Part A services under the Fee-for-Service (Original) Medicare Program: If a SNF believes upon admission or during a resident's stay that Medicare will not pay for covered skilled services and the SNF believes that an otherwise covered item or service may be denied as not being reasonable and necessary, facility staff must inform the resident or his or her legal representative in writing why these specific services may not be covered and of the resident's/beneficiary's potential liability for payment for the non-covered services. *Continued on next page*

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Review Reasons Related to Medicare continued	❑ **Contact the State Health Insurance Assistance Program (SHIP).** For more information on Medicare coverage and appealing a Medicare decision, contact your state's health insurance assistance program. https://www.medicare.gov/contacts/#resources/ships	**Facilities must issue the Skilled Nursing Facility Advanced Beneficiary Notice (SNFABN) to residents/beneficiaries prior to providing care that Medicare usually covers, but may not pay for, because the care is:** • not medically reasonable and necessary; or • is considered custodial. The SNFABN provides information to residents/beneficiaries so that they can decide if they wish to continue receiving the skilled services that may not be paid for by Medicare and assume financial responsibility. If the SNF provides the beneficiary with SNFABN, form CMS-10055, the facility has met its obligation to inform the beneficiary of his or her potential liability for payment and related standard claim appeal rights. Issuing the Notice to Medicare Provider Non-coverage (NOMNC), form CMS-10123, to a beneficiary only conveys notice to the beneficiary of his or her right to an expedited review of a service termination and does not fulfill the facility's obligation to advise the beneficiary of potential liability for payment. A facility must still issue the SNFABN to address liability for payment. The NOMNC informs the beneficiary of his or her right to an expedited review of a services termination. The SNF must issue this notice when there is a termination of all Medicare Part A services for coverage reasons. The SNF may not issue this notice if the beneficiary exhausts the Medicare covered days as the number of SNF benefit days is set in law and the Quality Improvement Organization (QIO) cannot extend the benefit period. Thus, a service termination due to the exhaustion of benefits is not considered a termination for "coverage" reasons. The NOMNC is issued when all covered services end for coverage reasons. If after issuing the NOMNC, the SNF expects the beneficiary to remain in the facility in a non-covered stay, the SNFABN must be issued to inform the beneficiary of potential liability for the non-covered stay. In most cases when all covered services end for coverage reasons, a SNF provider will issue: • NOMNC; or • NOMNC and the SNFABN. In cases where all Medicare covered services are ending, the beneficiary is being discharged and is not requesting an expedited review, only the NOMNC is required. Additionally, there are rare instances where a SNF would issue only a SNFABN. An example of this is when there is a reduction or termination in one Medicare Part A service while other Medicare Part A covered services are continuing. The SNF: • Must file a claim when requested by the beneficiary; and • May not charge the resident for Medicare covered Part A services while an expedited review and final decision is pending. **NOTE: A facility's requirement to notify and explain the SNFABN notices that the individual is no longer receiving Medicare Part A services is separate and unrelated from the admission and discharge requirements under 42 CFR §483.15 which outline the notification and requirements under which an individual may be discharged from the facility.**

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REASON 3

The resident's clinical or behavioral status (or condition) endangers the safety of individuals in the facility.

- *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.*

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 stay in or return to the facility?
2. What are the resident's concerns?
3. Did the resident receive a notice of the facility's bed-hold policy [§483.15(d)]?
4. Did the resident receive a notice of discharge?
5. What is the resident's understanding of what led to the facility's claim that the resident is endangering the safety of others? What happened according to the resident?
6. Did the resident attend the last care plan meeting? If not, why?
7. Is the concern addressed in the care plan?
8. Is the resident in agreement with the care plan? If not, why?
9. Is the resident interested in having a new care plan to address the concerns? If yes, does the resident wish to have an Ombudsman present at the care plan meeting?
10. Does the facility follow the care plan?

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

1. What harm does the resident pose?
2. Is the behavioral status related to the resident's diagnosis?

3. What are the resident's diagnoses?
4. Did the resident have these diagnoses upon admission?
5. What has the facility done to support the resident?
6. What is the facility currently doing to ensure all residents' safety?

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	Action Steps *(attempt one or all)*	Legal Basis
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. At times, a nursing facility may transfer a resident to the hospital and not allow them to return to the facility when the resident is ready to leave the hospital.	❑ **Attempt to Resolve with the Facility.** If the facility decided to issue a discharge notice after the transfer, you may receive a complaint or copy of the discharge notice while the resident is still in the hospital. Remind the facility of the federal requirements that state they must comply with discharge requirements. ❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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 or return to the facility from the hospital pending the appeal.[1] For additional advocacy considerations when an appeal is pending, and/or when a resident is hospitalized, or how to prepare for an appeal hearing review Section 2: Federal Requirements and Advocacy Considerations and Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges*.	**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(e)(1)(ii):** If a facility determines that a resident who was transferred to the hospital cannot return, the facility must comply with the requirements for discharge under 483.15 (c). **Regulation §483.15(c)(1)(ii):** The facility may not transfer or discharge a resident while the appeal is pending unless not doing so endangers 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. **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. If the resident appeals the discharge while in a hospital, facilities must allow the resident to return pending their appeal, unless there is evidence that the facility cannot meet the resident's needs, or the resident's return would pose a danger to the health or safety of the resident or others in the facility. A facility's determination to not permit a resident to return while an appeal of the resident's discharge is pending must not be based on the resident's condition when originally transferred to the hospital. *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.

[1]See exceptions identified in the Interpretive Guidelines for §483.15(c)(1)(ii).

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Notice of Bed-Hold Policy and Return. Determine whether the resident received a copy of the facility's bed-hold notice prior to and at the time of transfer.	❑ **Attempt to Resolve with the Facility.** If the resident did not receive a copy of the facility's bed-hold policy at the time of transfer, or if the facility is refusing to allow the resident to return from the hospital, remind the facility about the applicable federal requirements ❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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 or return to the facility from the hospital pending the appeal. For additional advocacy considerations when an appeal is pending, and/or when a resident is hospitalized, or how to prepare for an appeal hearing review Section 2: Federal Requirements and Advocacy Considerations and Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges*.	**Regulation §483.15(d):** Facilities are required to notify residents and their representatives of their bed-hold policy before transfer and at the time of transfer. **Regulation §483.15 (e)(1):** Requires facilities to permit residents to return 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 still requires the services of the facility and is eligible for Medicare skilled nursing facility or Medicaid nursing facility services.
Review Resident Records. Examine the resident's medical record to determine if the required **documentation by a physician is provided**. This does not have to be the resident's physician. Determine if the **facility was aware of the resident's condition** or diagnosis prior to admission.	❑ **Attempt to Resolve with the Facility.** If there is not adequate documentation, advocate for the facility to rescind the notice, or to reissue the notice after proper documentation has been included in the medical record, which would restart the 30-day time frame. If the facility knew of the diagnosis and the resident is displaying characteristics based on his or her diagnosis and this is the basis for discharge, you could argue that the facility agreed to meet the resident's needs by admitting 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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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. You can argue to have the discharge dismissed due to unmet requirements (lack of required documentation). Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.	**Regulation §483.15(c)(2):** The facility must ensure that a physician has documented the transfer or discharge in the resident's medical record and appropriate information is communicated to the receiving health care provider. **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)(i):** The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless…." **Interpretive Guidelines:** Section 483.15(c)(1)(i) provides that "This means that once admitted, for most residents (other than short-stay rehabilitation residents) the facility becomes the resident's home. Facilities are required to determine their capacity and capability to care for the residents they admit. Therefore, facilities should not admit residents whose needs they cannot meet based on the Facility Assessment. *Continued on next page*

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Review Resident Records continued		**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.
Review Care Plan. Determine if the resident is familiar with the **care plan** and agrees with the plan or if the resident would like changes to be made to the care plan. Carefully review the care plan, with the resident if applicable, for evidence that: • the resident's needs were 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, and • the care plan is written in measurable language that allows assessment of its effectiveness. What has the facility done to meet the resident's needs and prevent the alleged safety concern? Is this a new concern? Determine if the facility c**omprehensively assessed the physical, mental, and psychosocial needs of the resident** to identify risks and or underlying causes of the behavior and provided the necessary care and services to support those needs.	❑ **Attempt to Resolve with the Facility.** Consider sharing with the resident their option of requesting a new care plan meeting to address the needs that are not being met and requesting that the facility rescind the notice based on insufficiencies with the current care plan. If the facility is unwilling to work toward a resolution through a new care plan, you can argue the resident's rights are being violated and resident's needs are not being met due to improper care planning. ❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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. You can argue to have the discharge dismissed due to unmet requirements (lack of required documentation). Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.	**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):** 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. **Interpretive Guidelines:** The resident's care plan must be reviewed after each assessment, as required by §483.20, except discharge assessments, and revised based on changing goals, preferences and needs of the resident and in response to current interventions. **Investigative Summary and Probes (Appendix PP):** Is there evidence that the care plan interventions were implemented consistently across all shifts? **Regulation §483.40:** The facility must provide behavioral health services so each resident can reach his or her highest possible level of functioning and well-being. **Regulation §483.40(b)(3):** A resident who displays or is diagnosed with dementia, receives the appropriate treatment and services to attain or maintain his or her highest practicable physical, mental, and psychosocial well-being.

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Resident Reevaluation. Examine the resident's medical record to determine if the facility has **reevaluated the resident after the resident has received treatment** in the hospital.	❑ **Attempt to Resolve with the Facility.** Remind the facility of their responsibility to evaluate the resident after their hospital stay and not base the decision to issue a discharge notice on the resident's condition prior to the transfer to the hospital (e.g., without evaluating the resident after receiving treatment how can the facility determine whether the resident has improved or if the facility can now meet the needs of the resident). If the resident is in the hospital for treatment and the physician indicates that the resident requires the same level of care as the current facility provides, then you may be able to argue that either the resident is no longer a danger to others, or that the facility needs to revise the care plan to address the issue and take the resident back. Consider speaking with the hospital social worker or discharge planner to explain residents' rights and facility requirements, including the resident's right to return to the facility. Remind the hospital staff that they can file a complaint with the state survey agency if the facility refuses to take the resident back. ❑ **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. Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.	**Interpretive Guidelines (F626):** A facility may have concerns about permitting a resident to return to the facility after a hospital stay due to the resident's clinical or behavioral condition at the time of transfer. The facility must not evaluate the resident based on his or condition when originally transferred to the hospital. If the facility determines it will not be permitting the resident to return, the medical record should show evidence that the facility made efforts to: • Determine if the resident still requires the services of the facility and is eligible for Medicare skilled nursing facility or Medicaid nursing facility services. • Ascertain an accurate status of the resident's condition—this can be accomplished via communication between hospital and nursing home staff and/or through visits by nursing home staff to the hospital. • Find out what treatments, medications, and services the hospital provided to improve the resident's condition. If the facility is unable to provide the same treatments, medications, and services, the facility may not be able to meet the resident's needs and may consider initiating a discharge. For example, a resident who has required IV medication or frequent blood monitoring while in the hospital and the nursing home is unable to provide this same level of care. • Work with the hospital to ensure the resident's condition and needs are within the nursing home's scope of care, based on its facility assessment, prior to hospital discharge. For example, the nursing home could ask the hospital to: – Attempt reducing a resident's psychotropic medication prior to discharge and monitor symptoms so that the nursing home can determine whether it will be able to meet the resident's needs upon return. – Convert IV medications to oral medications and ensure that the oral medications adequately address the resident's needs. If the facility determines the resident will not be returning to the facility, the facility must notify the resident, his or her representative, and the LTC ombudsman in writing of the discharge, including notification of appeal rights. If the resident chooses to appeal the discharge, the facility must allow the resident to return to his or her room or an available bed in the nursing home during the appeal process, unless there is evidence that the resident's return would endanger the health or safety of the resident or other individuals in the facility.

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Sufficient Staffing. Review the **staffing levels** of the facility at crucial times, especially before and during the incident that led to the notice being issued. Determine if there was sufficient staffing by comparing the level of staffing to the needs of the other residents and of the resident being discharged (as specified in the care plan).	❑ **Attempt to Resolve with the Facility.** Determine if the facility provided adequate and appropriate training to the staff caring for residents with the resident's clinical or behavioral status (e.g., did the facility look to outside resources for guidance, training, and intervention that would meet the resident's specific needs). For example, if the issue relates to behavioral symptoms of a resident with dementia you could refer to the federal requirement that all staff must receive training in prevention and reporting of abuse, neglect, exploitation, and misappropriation of resident property and dementia management [483.95(c)] and in-service training for nurse aides about dementia management [483.95(g)]. If all staff have not received the required training or the training was inadequate remind the facility of their responsibilities per federal requirements and ask them to rescind the notice as the resident's needs were not met due to lack of proper training and individualized care. ❑ **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. Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.	**Regulations §483.40(a) & (a)(1)** • There must be sufficient staff. • Staff must have appropriate competencies and skills sets. • Competencies and skills sets must include knowledge of and appropriate training and supervision to care for residents with mental and psychosocial disorders. **Key Elements of Noncompliance (Appendix PP)** Surveyors are looking for the following actions to determine noncompliance: • Identify, address, and/or obtain necessary services for the behavioral health care needs of residents; • Develop and implement person-centered care plans that include and support the behavioral health care needs, identified in the comprehensive assessment; • Develop individualized interventions related to the resident's diagnosed conditions; • Review and revise behavioral health care plans that have not been effective and/or when the resident has a change in condition; • Learn the resident's history and prior level of functioning in order to identify appropriate goals and interventions; • Identify individual resident responses to stressors and utilize person-centered interventions developed by the Interdisciplinary Team (IDT) to support each resident; or • Achieve expected improvements or maintain the expected stable rate of decline based on the progression of the resident's diagnosed condition.

This project was supported, in part, by grant number 90OMRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.

REASON 4

The resident's clinical or behavioral status (or condition) otherwise endangers the health of individuals in the facility.

- *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.*

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 stay in or return to the facility?
2. What are the resident's concerns?
3. Did the resident receive a notice of the facility's bed-hold policy [§483.15(d)]?
4. Did the resident receive a notice of discharge?
5. Did the resident have this condition prior to being admitted to the facility?
6. If not, then does the resident know where he/she acquired the health condition?
7. Is this concern addressed in the care plan?
8. Did the resident attend the last care plan meeting? If not, why?
9. Is the resident in agreement with the care plan? If not, why?
10. Does the facility follow the care plan?

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

1. What health dangers does the resident pose to others in the facility?
2. Is the "endangerment" documented in the resident's clinical file by a physician?
3. Did the resident have this health condition prior to being admitted to the facility?

4. What has the facility done to address the health danger prior to transferring the resident to the hospital?
5. What has the facility done to protect the health of all residents in the facility?
6. Was the state survey agency notified of the health risk?

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	Action Steps *(attempt one or all)*	Legal Basis
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. At times, a nursing facility may transfer a resident to the hospital and not allow them to return to the facility when the resident is ready to leave the hospital.	❑ **Attempt to Resolve with the Facility.** If the facility decided to issue a discharge notice after the transfer, you may receive a complaint or copy of the discharge notice while the resident is still in the hospital. Remind the facility of the federal requirements that state they must comply with discharge requirements. ❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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 or return to the facility from the hospital pending the appeal.[1] For additional advocacy considerations when an appeal is pending, and/or when a resident is hospitalized, or how to prepare for an appeal hearing review Section 2: Federal Requirements and Advocacy Considerations and Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges*.	**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(e)(1)(ii):** If a facility determines that a resident who was transferred to the hospital cannot return, the facility must comply with the requirements for discharge under 483.15 (c). **Regulation §483.15(c)(1)(ii):** The facility may not transfer or discharge a resident while the appeal is pending unless not doing so endangers 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. **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. If the resident appeals the discharge while in a hospital, facilities must allow the resident to return pending their appeal, unless there is evidence that the facility cannot meet the resident's needs, or the resident's return would pose a danger to the health or safety of the resident or others in the facility. A facility's determination to not permit a resident to return while an appeal of the resident's discharge is pending must not be based on the resident's condition when originally transferred to the hospital. *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.

[1]See exceptions identified in the Interpretive Guidelines for §483.15(c)(1)(ii).

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Notice of Bed-Hold Policy and Return. Determine whether the resident received a copy of the facility's bed-hold notice prior to and at the time of transfer.	❑ **Attempt to Resolve with the Facility.** If the resident did not receive a copy of the facility's bed-hold policy at the time of transfer, or if the facility is refusing to allow the resident to return from the hospital, remind the facility about the applicable federal requirements ❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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 or return to the facility from the hospital pending the appeal.[2] For additional advocacy considerations when an appeal is pending, and/or when a resident is hospitalized, or how to prepare for an appeal hearing review Section 2: Federal Requirements and Advocacy Considerations and Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges*.	**Regulation §483.15(d):** Facilities are required to notify residents and their representatives of their bed-hold policy before transfer and at the time of transfer. **Regulation §483.15 (e)(1):** Requires facilities to permit residents to return 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 still requires the services of the facility and is eligible for Medicare skilled nursing facility or Medicaid nursing facility services.
Review Resident Records. Examine the resident's medical record to determine if a **physician has documented that the resident is a danger to the health of others** in the facility. This does not have to be the resident's physician. Determine if the **facility was aware of the resident's condition** or diagnosis prior to admission.	❑ **Attempt to Resolve with the Facility.** If there is not adequate documentation, advocate for the facility to rescind the notice, or to reissue the notice after proper documentation has been included in the medical record, which would restart the 30-day time frame. If the facility knew of the diagnosis and the resident is displaying characteristics based on his or her diagnosis and this is the basis for discharge, you could argue that the facility agreed to meet the resident's needs by admitting the resident. *Continued on next page*	**Regulation §483.15(c)(2):** The facility must ensure that a physician has documented the transfer or discharge in the resident's medical record and appropriate information is communicated to the receiving health care provider. **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)(i):** The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless…." *Continued on next page*

[2]See exceptions identified in the Interpretive Guidelines for §483.15(c)(1)(ii).

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Review Resident Records continued	❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years). ❑ **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. You can argue to have the discharge dismissed due to unmet requirements (lack of required documentation). Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.	**Interpretive Guidelines:** Section 483.15(c)(1)(i) provides that "This means that once admitted, for most residents (other than short-stay rehabilitation residents) the facility becomes the resident's home. Facilities are required to determine their capacity and capability to care for the residents they admit. Therefore, facilities should not admit residents whose needs they cannot meet based on the Facility Assessment. **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.
Review the Care Plan. Determine if the resident is familiar with the care plan and agrees with the plan or if the resident would like changes to be made to the care plan. Carefully review the care plan, with the resident if applicable, for evidence that: • the resident's needs were 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, and • the care plan is written in measurable language that allows assessment of its effectiveness. *Continued on next page*	❑ **Attempt to Resolve with the Facility.** Consider sharing with the resident their option of requesting a new care plan meeting to address the needs that are not being met and requesting that the facility rescind the notice based on insufficiencies with the current care plan. If the facility is unwilling to work toward a resolution through a new care plan, you can argue the resident's rights are being violated and resident's needs are not being met due to improper care planning. *Continued on next page*	**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):** 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. *Continued on next page*

Resolution Strategies

What has the facility done to meet the resident's needs and prevent the alleged health endangerment concern? Is this a new concern?

Determine if the facility provided the necessary care and services for the resident to support his/her highest practicable level of physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and care plan.

Determine **how or where the resident developed the condition** that led to the alleged endangerment. If the resident acquired the condition prior to admission and the facility was aware of the condition, the facility should not discharge the resident based on the condition.

If the condition was acquired while at the facility, then perhaps the facility is the source of the health concern (Leptospirosis, for example) and may need to take additional precautions for the safety of all residents.

Action Steps *(attempt one or all)*

- ❑ **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 (e.g., the facility transferred the resident to a hospital and will not allow them to return to the nursing facility the resident has called home for several years).
- ❑ **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. You can argue to have the discharge dismissed due to unmet requirements (lack of required documentation). Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.
- ❑ **Consult Supervisor and/or State Ombudsman** If the condition is something you are not familiar with, speak with your supervisor and/or the State Ombudsman to see if they have information or access to a medical professional familiar with the condition and the role of the Ombudsman program.

Legal Basis

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.

Interpretive Guidelines: The resident's care plan must be reviewed after each assessment, as required by §483.20, except discharge assessments, and revised based on changing goals, preferences and needs of the resident and in response to current interventions.

Investigative Summary and Probes (Appendix PP): Is there evidence that the care plan interventions were implemented consistently across all shifts?

Regulation §483.15(c)(1)(i): The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless…."

Interpretive Guidelines: Section §483.15(c)(1)(i) states, "This means that once admitted, for most residents (other than short-stay rehabilitation residents) the facility becomes the resident's home. Facilities are required to determine their capacity and capability to care for the residents they admit. Therefore, facilities should not admit residents whose needs they cannot meet based on the Facility Assessment.

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.

Resolution Strategies

Resident Reevaluation. Examine the resident's medical record to determine if the facility has **reevaluated the resident after the resident has received treatment** in the hospital.

Action Steps *(attempt one or all)*

❑ **Attempt to Resolve with the Facility.** Remind the facility of their responsibility to evaluate the resident after their hospital stay and not base the decision to issue a discharge notice on the resident's condition prior to the transfer to the hospital (e.g., without evaluating the resident after receiving treatment how can the facility determine whether the resident has improved or if the facility can now meet the needs of the resident).

If the resident is in the hospital for treatment and the physician indicates that the resident requires the same level of care as the current facility provides, then you may be able to argue that either the resident is no longer a danger to others, or that the facility needs to revise the care plan to address the issue and take the resident back.

Consider speaking with the hospital social worker or discharge planner to explain residents' rights and facility requirements, including the resident's right to return to the facility. Remind the hospital staff that they can file a complaint with the state survey agency if the facility refuses to take the resident back.

❑ **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. Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.

Legal Basis

Interpretive Guidelines (F626): A facility may have concerns about permitting a resident to return to the facility after a hospital stay due to the resident's clinical or behavioral condition at the time of transfer. The facility must not evaluate the resident based on his or condition when originally transferred to the hospital. If the facility determines it will not be permitting the resident to return, the medical record should show evidence that the facility made efforts to:

- Determine if the resident still requires the services of the facility and is eligible for Medicare skilled nursing facility or Medicaid nursing facility services.
- Ascertain an accurate status of the resident's condition—this can be accomplished via communication between hospital and nursing home staff and/or through visits by nursing home staff to the hospital.
- Find out what treatments, medications, and services the hospital provided to improve the resident's condition. If the facility is unable to provide the same treatments, medications, and services, the facility may not be able to meet the resident's needs and may consider initiating a discharge. For example, a resident who has required IV medication or frequent blood monitoring while in the hospital and the nursing home is unable to provide this same level of care.
- Work with the hospital to ensure the resident's condition and needs are within the nursing home's scope of care, based on its facility assessment, prior to hospital discharge. For example, the nursing home could ask the hospital to:
  - Attempt reducing a resident's psychotropic medication prior to discharge and monitor symptoms so that the nursing home can determine whether it will be able to meet the resident's needs upon return.
  - Convert IV medications to oral medications and ensure that the oral medications adequately address the resident's needs.

If the facility determines the resident will not be returning to the facility, the facility must notify the resident, his or her representative, and the LTC ombudsman in writing of the discharge, including notification of appeal rights. If the resident chooses to appeal the discharge, the facility must allow the resident to return to his or her room or an available bed in the nursing home during the appeal process, unless there is evidence that the resident's return would endanger the health or safety of the resident or other individuals in the facility.

Resolution Strategies	Action Steps *(attempt one or all)*	Legal Basis
Sufficient Staffing. Review the **staffing levels** of the facility at crucial times, especially before and during the incident that led to the notice being issued. Determine if there was sufficient staffing by comparing the level of staffing to the needs of the other residents and of the resident being discharged (as specified in the care plan).	❑ **Attempt to Resolve with the Facility.** Determine if the facility provided adequate and appropriate training to the staff caring for residents with the resident's clinical or behavioral status. If all staff have not received the required training or the training was inadequate remind the facility of their responsibilities per federal requirements and ask them to rescind the notice as the resident's needs were not met due to lack of proper training and individualized care. ❑ **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. Review Section 4: Appeal Hearings of *Enhancing Your Advocacy Toolbox: Protecting Residents from Nursing Facility-Initiated Discharges* for additional information.	**Regulation §483.40(a) & (a)(1)** • There must be sufficient staff. • Staff must have appropriate competencies and skills sets. • Competencies and skills sets must include knowledge of and appropriate training and supervision to care for residents with mental and psychosocial disorders.

This project was supported, in part, by grant number 90OMRC0001-01-00, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official Administration for Community Living policy.

REASON 5

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

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.*

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	Action Steps *(attempt one or all)*	Legal Basis
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.	❑ **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. *Continued on next page*	**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).[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. *Continued on next page*

[1]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	Action Steps *(attempt one or all)*	Legal Basis
Review the Discharge Notice continued	❑ **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.	**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.
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.	❑ **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.	**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.[2]

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.

[2]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.

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