

TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 50 – MEDICAID LONG-TERM SERVICES AND SUPPORTS

SUBCHAPTER 00 – LONG-TERM SERVICES

PART 7 - Involuntary Discharge from a Long-Term Care Facility

7.1 Purpose and Overview

The purpose of this rule is to set forth requirements related to resident discharges and transfers initiated by state licensed long-term care facilities, without regard to the resident's source of payment. All such transfer/ discharges that are taken by a long-term care facility without the agreement or consent of the resident or the resident representative are involuntary and are prohibited, except as provided herein.

7.2 Legal Authority

- A. State authorities: These rules are promulgated pursuant to the authority set forth in R.I. Gen. Laws Chapter 40-8, "Medical Assistance"; R.I. Gen. Laws Chapter 40-6, "Public Assistance Act"; R.I. Gen. Laws § 23-17-19.1, "Rights of Patients"; R.I. Gen. Laws Chapter 23-17.5, "Rights of Nursing Home Patients"; R.I. Gen. Laws § 23-17.5-17, "Transfer to Another Facility"; R.I. Gen. Laws Chapter 23-17.4, "Assisted Living Residence Licensing Act"; R.I. Gen. Laws § 23-17.4-16, "Rights of Residents."
- B. Federal authorities: Additional authority is derived from 42 C.F.R. § 483 Subpart B, "Requirements for Long Term Care Facilities"; Title XIX of the Social Security Act; 42 U.S.C. § 1396r, "An Act to Amend Title XIX of the Social Security Act to Prohibit Transfers or Discharges of Residents of Nursing Facilities as a Result of a Voluntary Withdrawal from Participation in the Medicaid Program"; the State's Medicaid State Plan; and the Rhode Island Comprehensive Section 1115 Demonstration, as approved in final form on February 25, 2014, and as subsequently amended.

7.3 Definitions

- A. As used herein, the following terms are defined as follows:
 - 1. "Assisted living residence" means a publicly or privately operated residence that provides directly or indirectly by means of contracts or arrangements personal assistance and may include the delivery of limited health services, as defined under R.I. Gen. Laws § 23-17.4-2(12), to meet

the resident's changing needs and preferences, lodging, and meals to six (6) or more adults who are unrelated to the licensee or administrator, excluding however, any privately operated establishment or facility licensed pursuant to R.I. Gen. Laws Chapter 23-17 and those facilities licensed by or under the jurisdiction of the Department of Behavioral Healthcare, Development Disabilities and Hospitals, the Department of Children, Youth, and Families, or any other state agency.

2. "Department of Human Services" or "DHS" means the State agency established under the provisions of R.I. Gen. Laws Chapter 40-1 that is empowered to administer certain human services. The DHS has been delegated the authority through an interagency service agreement with the Executive Office of Health and Human Services (EOHHS), the Medicaid Single State Agency, to determine Medicaid eligibility in accordance with applicable State and federal laws, rules and regulations.
3. "Executive Office of Health and Human Services" or "EOHHS" means the state agency established in 2006 under the provisions of R.I. Gen. Laws Chapter 42-7.2 within the executive branch of state government which serves as the principal agency for managing the Departments of Children, Youth, and Families (DCYF); Health (DOH); Human Services (DHS); and Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH).
4. "Intermediate care facility for persons with intellectual/developmental disabilities" or "ICF/ID" means a State-licensed health care facility that provides long-term services and supports to persons with intellectual/developmental disabilities.
5. "Long-term care facility" means and includes nursing facilities (NF), assisted living residences (ALR), long-term care hospitals (LTH), and intermediate care facilities for persons with intellectual/developmental disabilities (ICF-I/DD). Assisted living residences are also included for this rule only, although not licensed as health care facilities under R.I. Gen. Laws Chapter 23-17.
6. "Nursing facility" means an institutional setting that provides long-term care and is licensed in accordance with R.I. Gen. Laws Chapter 23-17, "Licensing of Health Care Facilities."
7. "Resident representative" means any of the following:
 - a. An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

- b. A person authorized by state or federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;
 - c. Legal representative, as used in § 712 of the Older Americans Act (P.L. 114–144); or
 - d. The court-appointed guardian or conservator of a resident.
 - e. Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.
8. “Transfer” or “discharge” means movement of a resident to a bed outside of the long-term care facility whether that bed is in the same physical plant or not. “Transfer” or “discharge” does not refer to the movement of a resident to a bed within the same long-term care facility.

7.4 Discharge Criteria

- A. The long-term care facility must permit each resident to remain in the long-term care facility, and not transfer or discharge the resident from the long-term care facility unless:
- 1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the long-term care facility;
 - 2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the long-term care facility;
 - 3. The safety of individuals in the long-term care facility is endangered due to the clinical or behavioral status of the resident;
 - 4. The health of individuals in the long-term care facility would otherwise be endangered;
 - 5. 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.
 - a. Non-payment 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.

- b. For a resident who becomes eligible for Medicaid after admission to a long-term care facility, the long-term care facility may charge a resident only allowable charges under Medicaid; or
- 6. The long-term care facility ceases to operate.
- B. Each long-term care facility must display a notice which identifies these transfer and discharge criteria and informs residents of their appeal rights. The notice should be prominently posted along with the Resident's Bill of Rights.
- C. This information must be provided to the individual both verbally and in a prominent manner in writing on a separate page at the time of admission. A written acknowledgment of the receipt of the notice, signed by the individual must be obtained.

7.5 DOCUMENTATION REQUIREMENTS

- A. In instances where a resident is being transferred or discharged, the long-term care facility must document in the resident's clinical record the basis for the transfer or discharge. The resident's physician must document as follows:
 - 1. The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the long-term care facility;
 - 2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the long-term care facility;
 - 3. The health of individuals in the long-term care facility would otherwise be endangered.
- B. In instances of a resident's transfer, information provided to the receiving provider/facility must include a minimum of the following:
 - 1. Contact information of the practitioner responsible for the care of the resident;
 - 2. Resident representative information including contact information;
 - 3. Advance Directive information;
 - 4. All special instructions or precautions for ongoing care, as appropriate;
 - 5. Comprehensive care plan goals;
 - 6. All other necessary information, including a copy of the resident's discharge summary, and any other documentation, as applicable, to ensure a safe and effective transition of care.

7.6 PRE-TRANSFER/ DISCHARGE NOTICE

- A. Before transferring or discharging a resident, a long-term care facility must notify the resident (and, if known, a resident representative) of the transfer or discharge and of the reasons for the discharge in a language and manner they understand. The long-term care facility must also notify the Office of the State Long-Term Care Ombudsman.
- B. The written notice must include the following:
 - 1. The reason for transfer or discharge;
 - 2. The effective date of transfer or discharge;
 - 3. The location to which the resident is transferred or discharged;
 - 4. A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity that receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
 - 5. The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
 - 6. For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities; and
 - 7. For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder.
- C. The long-term care facility must notify the resident at least thirty (30) days in advance of the resident's transfer or discharge.
- D. At the time the resident receives the discharge notice, s/he must receive a notice of appeal rights.
- E. Thirty (30) days advance notice is not required under the following circumstances:
 - 1. In the event of danger to the safety or health of the individuals in the long-term care facility;
 - 2. When the resident's health improves sufficiently to allow a more immediate transfer or discharge;

3. Where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs;
4. When the resident has not resided in the long-term care facility for a period of at least thirty (30) days.
5. In the case of such exceptions (as above), notice must be given as many days before the date of the move as is practicable, and include all of the information set forth in § 7.6(B) of this Part.

7.7 RESIDENT APPEAL RIGHTS

- A. Long-term care facility residents who wish to challenge their transfers or discharges may appeal in accordance with the provisions of § 10-05-2.4.8 of this Title, "Appeals Process and Procedures for EOHHS Agencies and Programs."
- B. The appeals process cannot be limited to Medicaid-eligible long-term care facility residents. EOHHS will conduct administrative hearings for any long-term care facility resident who wishes to appeal a transfer or discharge from the facility, regardless of source of payment.
- C. The long-term care facility may not transfer or discharge the resident while the appeal is pending, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the long-term care facility.

7.8 SEVERABILITY

If any provision in any section of this rule or the application thereof to any person or circumstances is held invalid, its invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

210-RICR-50-00-7

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Type of Filing: Refile Capabilities

Department of State

Regulation Effective Date

Original Signing Date

Department of State Initials

Department of State Date