



OIG Signals Focus on Involuntary Transfers and Discharges in Nursing Homes

Jennifer L. Hilliard

As part of its Work Plan for 2019, the Department of Health and Human Services' (DHHS) Office of Inspector General (OIG) recently announced its intent to determine the extent to which State long-term care ombudsmen address involuntary transfers and discharges from nursing homes and the extent to which State survey agencies investigated and took enforcement actions against nursing homes for inappropriate involuntary transfers and discharges. OIG also signaled that it would examine the extent to which nursing homes meet Centers for Medicare and Medicaid Services (CMS) requirements for involuntary transfers and discharges.

Under CMS regulations at 42 C.F.R. § 483.15(c)(1)(i), there are only six (6) circumstances in which a facility may involuntarily transfer or discharge a resident:

- (A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility . . . ; or
- (F) The facility ceases to operate.

In addition to specifying the documentation the facility must complete,¹ the regulations also require the facility to notify the resident and the resident's representative of the transfer or discharge, and the reasons for the move, in writing, and must do so in a language and manner the patient (or his or her representative) understands.² Due to concerns about the effect of involuntary transfers and discharges on residents, CMS, in its 2016 revisions to the Medicare and Medicaid Requirements of Participation (RoPs) for nursing homes, required that a copy of the notice be sent to the State long-term care ombudsman. In most instances, the notice must be given to the ombudsman concurrently with the notice to the resident and the resident's representative; however, in the case of temporary transfers on an emergency basis to an acute care facility, the notice may be sent when practicable, such as in a list of residents transferred on a monthly basis.³ CMS reasoned that notice to the ombudsman provides added protection to the residents and ensures that the ombudsman office is aware of facility practices and activities related to transfers and discharges.

Given CMS's own concern about the number and appropriateness of involuntary transfers and discharges amid claims of "resident dumping" by resident advocates and the media, it is not surprising that the OIG's Office of Evaluations and Inspections will be looking into the issue in 2019.

It should be noted—emergency transfers to acute care facilities aside—that the requirement in the revised RoPs for providers to undertake and regularly update a facility assessment of their resources and capabilities will necessarily make it more challenging for providers to transfer or

¹ 42 U.S.C. § 483.15(c)(2)

² 42 U.S.C. § 483.15(c)(3)

³ See CMS Memorandum, S&C: 17-37-NH (May 12, 2017), at 4.

discharge residents whom they admitted to their facility on the basis that the resident's needs cannot be met in the facility. As a result, it is critical for providers to integrate the facility assessment when making admission, transfer, and discharge decisions and to carefully document those decisions with a view toward the close scrutiny those decisions will receive by residents, their representatives, the ombudsman, government agencies, and even resident advocate organizations and the media.

Authors and Contributors

Jennifer L. Hilliard

Of Counsel, DC Office
202.677.4900
jennifer.hilliard@agg.com

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Atlanta Office

171 17th Street, NW
Suite 2100
Atlanta, GA 30363

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