

* New Mexico regulations require the facility to give notice of the transfer or discharge to the resident, the resident's physician, and the resident's guardian, relative or other responsible person. The notice shall contain a time and place of planning conference and inform the resident that the people of the resident's choice may attend the conference. The notice must also explain the procedure for submitting a complaint to Licensing and Certification. See §7.9.2.38(B)(1-2) NMAC.

When must the written notice be given?

In general, a facility *must* provide the notice at least 30 days before the proposed transfer/discharge, although the exceptions to this rule are numerous. Notice *may* be given as soon as practicable before transfer or discharge if:

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

[See 42 CFR §483.12(a)(5)]

What is the process for appeals?

The resident may file an appeal with State Fair Hearing Bureau, P.O. Box 2348, Santa Fe, NM 87504; telephone: 827-7290 or 800-432-6217. The resident may file the appeal by requesting it orally or in writing within 90 calendar days of the mailing of the notice of action. If the resident files an appeal within 10 days of the notice, a facility may not transfer or discharge the resident unless a final decision is reached in its favor. The hearing will: meet the standards of due process, allow the presentation and refutation of evidence, and have decisions based solely upon evidence presented at the hearing. See §8.354.2.11 NMAC.

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Nursing Home Transfer and Discharge

UNDER FEDERAL (42 C.F.R. 483.12)¹ &
STATE (7.9.2.38 NMAC; 8.354.2 NMAC) REGULATIONS

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This information is not intended as a substitute for specific legal advice.

¹ The corresponding interpretative guidelines for these regulations are contained in the CMS State Operations Manual (SOM), Appendix PP - Guidance to Surveyors for Long Term Care Facilities.

What is a transfer or discharge?

A transfer or discharge is moving a resident to a bed outside the Medicare or Medicaid certified facility where that person is a resident. Transfer and discharge does not refer to movement of a resident to a different bed within that facility. See 42 CFR §483.12(a)(1).

When can a facility make a transfer or discharge?

A facility must permit a resident to remain in the facility unless:

- (1) The transfer or discharge is necessary for the resident's welfare and the facility cannot meet the residents needs;
- (2) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the facility's services;
- (3) The safety of the individuals in the facility is endangered;
- (4) The health of the individuals in the facility would otherwise be endangered;
- (5) The resident has failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid) for a stay at the facility. For a resident who becomes eligible for Medicaid after admission, the facility may charge a resident only allowable charges under Medicaid; OR
- (6) The facility closes.

[See 42 CFR §483.12(a)(2); §7.9.2.38(A) NMAC]

How must the facility document the grounds for the transfer or discharge?

Unless the facility is closing, the grounds for the resident's transfer or discharge must be documented in the resident's clinical records. The *resident's physician* must make the documentation if the transfer or discharge is:

- Necessary for the resident's welfare and the facility cannot meet the resident's needs; or
- Appropriate because the resident's health has improved sufficiently so the resident no longer needs the facility's services.

Any physician must document a resident's transfer or discharge if:

- The health of the individuals in the facility would otherwise be endangered.

[See 42 CFR §483.12(a)(3)]

What must the facility assure before it makes a transfer or discharge?

The facility must provide sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge. See 42 CFR §483.12(a)(7). New Mexico regulations (see §7.9.2.38(B)(2) NMAC) require the facility to hold a planning conference at least three days before the transfer or discharge for permanent removal. This is required unless the resident requires respite care or the safety and health of the resident would be jeopardized. The residents, guardian, Adult Protective Services worker if appropriate, and any person designated by the resident including the resident's physician, attorney or Ombudsman shall attend. The purpose of this meeting is to review the need for transfer or discharge, assess the effect of relocation on the resident, discuss alternative placements, and develop a relocation plan which includes at least:

- Counseling regarding the transfer or discharge;
- Arrangements for the resident to visit the potential alternative placement and/or meet with the facility's admissions staff (unless this would hurt the health of the resident or the resident doesn't want to do this);
- Assistance to the resident in planning the moving of possessions or money to the new facility;
- Provisions for maintaining medications and treatments during the relocation.

What notice must the facility give before it may transfer or discharge the resident?

The facility must give notice to the resident and, if known, a family member or legal representative of the resident. The notice must be written and in a language and manner the recipients will understand.

The written notice must contain:

- (1) The reason for transfer or discharge;
- (2) The effective date of transfer or discharge;
- (3) The location to which the resident is to be transferred or discharged;
- (4) A statement that the resident has the right to appeal the action of the State Fair Hearing Bureau;
- (5) The name, address, and telephone number of the State Long Term Care Ombudsman Program; AND
- (6) For residents with developmental disability or mental illness, the name, address, and telephone number of Protection and Advocacy Systems, Inc.

[See 42 CFR §483.12(a)(4-6)]