Emergency
Involuntary
Discharge Issues

By
J.R. “Lynn” Böes R.N., B.S.N., J.D.
Kendall R. Watkins, J.D.
Basis of Regulations

A. 481 I.A.C. § 58.40
B. 42 C.F.R. § 483.12 [F201 - F204]
Transfer v. Discharge

A. “Transfer” is moving the resident from the facility to another legally responsible institutional setting

B. “Discharge” is moving the resident to a non-institutional setting when the releasing facility ceases to be responsible for the resident’s care
Basis for Discharge

A. Medical Reasons

1. For the resident’s welfare or that of other residents
2. Nonpayment
3. By reason of negative action by the Iowa Department of [Human] Services
4. By reason of negative action by the professional standards review organization
Types of Discharge

A. Thirty Day Notice (not discussed herein)
B. Emergency Discharges – Move first, then give notice (focus of this presentation)
Emergency Discharges

A. When a resident’s health has improved (or deteriorated) to allow a more immediate transfer or discharge

B. When a resident has not resided in the facility for 30 days

C. To protect the health, safety, or well-being of other residents and staff from the resident being transferred
Emergency Discharges

D. If the transfer or discharge is subsequently agreed to by the resident or the resident’s responsible party, and notification is given to the responsible party, physician, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility

E. If the discharge or transfer is the result of a final, non-appealable decision by the Department of [Human] Services or the professional standards review organization
The Discharge Notice

A. The discharge notice **MUST** contain each of the following elements:

1. The stated reason for the discharge
2. The effective date of the discharge
3. The location to which the resident is transferred or discharged
4. A statement that the resident has the right to appeal the action to the State. Must use DIA required notice
The Discharge Notice

5. For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (e.g., Disability Rights Iowa)
The Discharge Notice

6. For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (Disability Rights Iowa)

7. A copy of the notice must be personally delivered to the resident

8. A copy of the notice must be transmitted to the Department On Aging
The Discharge Notice

9. A copy of the notice must be transmitted to the resident’s responsible party

10. A copy of the notice must be transmitted to the person or agency responsible for the resident’s placement [if different from any of the forgoing individuals or agencies]

11. A copy of the notice should be transmitted to the resident’s treating physician

12. A copy of the notice must be transmitted to the DIA Program Coordinator
13. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa Department of [Human] Services or the professional standards review organization (Telligen), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.
Other Requirements

A. Documentation supporting the discharge must be contained in the resident’s clinical record

B. Where the resident’s own welfare or health has improved sufficiently so the resident no longer needs the services provided by the facility, the resident’s physician must provide the documentation

C. Where a discharge is based on the endangering of health of individuals in the facility, the documentation must be provided by any physician (for example, the medical director)
Other Requirements

D. Evidence that the resident’s continued presence in the facility would adversely affect the resident’s own welfare or that of other residents shall be made by the administrator or designee and shall be in writing and shall include specific information to support this determination.

E. A copy of the discharge notice shall be personally delivered to the resident and a copy placed in the resident’s record.
Other Requirements

F. The involuntary transfer or discharge shall be discussed with the resident, the resident’s responsible party, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility within 48 hours after resident leaves the facility; the resident must receive the written notice with 48 hours of leaving the facility.

G. The explanation and discussion of the reasons for emergency involuntary transfer or discharge shall be given by the facility administrator or designee.

H. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made part of the resident’s record.
Where is the Resident Going to Go?

A. Other facilities
B. Hospital
C. Home
D. Family Members
E. Other Institutions
F. Jail
Appeals and Hearings

A. If no appeal is filed by or on behalf of the resident, the facility is free to follow through with discharge

B. If an appeal is filed, a hearing will be scheduled before an Administrative Law Judge from DIA

C. An appeal acts as an automatic “stay” meaning the resident will not have to be readmitted to the facility prior to the administrative hearing and decision
Appeals and Hearings

D. Hearing can be held either by in-person meeting or conference call

E. The hearing is normally scheduled within fourteen days after receipt of the resident’s notice

F. Either party has the right to be represented by counsel, at their own expense

G. At hearing, both parties have the opportunity to present any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge should be made or denied.
Appeals and Hearings

H. Evidence should include:

1. Nurse’s notes
2. MDS Assessments
3. Physician Orders
4. Care Plans
5. MARs
Appeals and Hearings

I. This decision is required to be mailed by certified mail to the licensee, resident, responsible party, and Department of Elder Affairs Long-term Care Ombudsman within 10 working days (14 calendar days) after the hearing has been concluded.

J. Either party has the right to request review of the proposed decision issued by the Administrative Law Judge.

K. During this period, the resident arguably remains where he/she is.
Discharge Planning

A. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. See specific requirements under F204.
Discharge Planning

B. Though the resident is required to receive counseling services before an involuntary transfer to minimize the possible adverse effects of the involuntary transfer, this is waived for emergency involuntary transfers and is required of the receiving facility instead. See 481 I.A.C. § 58.40(10). Counseling shall be documented in the resident’s record.
Discharge Planning

C. The counseling that is required by the receiving facility shall be provided by a qualified individual as set forth in 481 I.A.C. § 58.40(10).
Recent Developments

A. Contempt of Court Actions in court ordered placement cases
B. Duty to exhaust administrative remedies
C. A word about Home Health Emergency Discharges
D. MCO impact on Involuntary DC (to be determined)

441—73.10(249A) Discharge planning. The managed care organization shall establish policies and procedures, subject to approval by the department, that protect an individual from involuntary discharge that may lead to placement in an inappropriate or more restrictive setting. The managed care organization shall facilitate a seamless transition whenever a member transitions between facilities or residences.

[ARC 2358C, IAB 1/
6/16, effective 1/1/16]
Involuntary Discharge Issues

QUESTIONS & ANSWERS