PART 3 ADMISSIONS

3.2 BED HOLD POLICIES. The facility shall develop policies for holding beds available for residents who are temporarily absent therefrom, provide a copy of the policy upon admission, and explain these policies to residents upon admission and before each temporary absence.

PART 12. RESIDENTS' RIGHTS

12.1 RESIDENTS' RIGHTS. The facility shall adopt a statement of the rights and responsibilities of their residents, post it conspicuously in a public place, and provide a copy to each resident or guardian before admission. The facility and staff shall observe these rights in the care, treatment, and supervision of the residents. Rights shall include at least:

12.1.5 The right to be fully informed, in writing, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges, including charges for services not covered under Medicare or Medicaid or not covered by the basic per diem rate;

12.1.6 The right to be adequately informed of his or her medical condition and proposed treatment unless otherwise indicated by his or her physician, and to participate in the planning of all medical treatment, including:

(2) The right to participate in discharge planning...

12.1.11 The right to be transferred or discharged only for medical reasons or his or her welfare, or that of other residents, or for nonpayment for his or her stay, not for raising concerns or complaints, and the right to be given reasonable advance notice of any transfer or discharge, except in the case of an emergency as determined by professional staff, in accordance with the transfer procedures prescribed by Section 12.6;

12.1.14 The right of any person eligible to receive Medicaid to select any long-term care facility certified for participation in Medicaid where space is available.

12.6 TRANSFER, DISCHARGE, AND ROOM CHANGE PROCEDURES AND APPEALS.

12.6.1 Definitions:
(1) "Discharge" means movement of a resident from a nursing facility to a non-institutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

(2) "Transfer" means movement of a resident from a nursing facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility.

(3) "Room change" refers to the movement of a resident from one room to another.

12.6.2 A resident shall not be transferred or discharged unless:

(1) The transfer or discharge is necessary for the resident's welfare. Facilities that are certified to participate in the Medicaid and/or Medicare reimbursement program must also demonstrate that the resident's needs cannot be met in the facility;

(2) The transfer or discharge is only for medical reasons. Facilities that are certified to participate in the Medicaid and/or Medicare reimbursement program must also demonstrate that the resident's needs cannot be met in the facility;

(3) The transfer or discharge is necessary to preserve the welfare of other residents; or

(4) The resident has failed to pay for (or to have paid under Medicaid or Medicare) a stay at the facility. Facilities that are certified to participate in the Medicaid and/or Medicare reimbursement program must also provide reasonable and appropriate notice of nonpayment and its consequences to the resident prior to initiating a transfer or discharge of a resident for reasons of non-payment.

12.6.3 When the facility transfers or discharges a resident under any of the circumstances specified in 12.6.2, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when the transfer or discharge is necessary under 12.6.2 (1) and (2); and

(2) a physician when transfer or discharge is necessary under 12.6.2 (3).

12.6.4 Whenever a resident is transferred or discharged for the reasons in 12.6.2 (1), 12.6.2 (2) or 12.6.2 (3), the facility must provide assessment and reasonable intervention prior to determining the need for the transfer or discharge. The assessment, attempted
intervention and reason for the discharge or transfer shall be documented in the clinical record.

12.6.5 The facility shall provide reasonable advance notice to the resident and the family member or legal representative of the resident of its intent to transfer or discharge a resident. Reasonable advance notice means notice in writing at least thirty (30) days before the transfer or discharge except in the following circumstances in which the professional staff determines there is an emergency, in which case the notice must be made as soon as practicable before the transfer or discharge:

(1) the safety of residents in the facility is endangered;
(2) the health of residents in the facility is endangered; or
(3) an immediate transfer or discharge is required by the resident's urgent medical needs.

12.6.6 The written notice shall be in a language and manner understandable to the resident and the resident's legal representative, if applicable, and shall include:

(1) The reason for the transfer or discharge;
(2) The effective date of the transfer or discharge;
(3) The location to which the resident is transferred or discharged;
(4) The grievance procedure; and
(5) the following text:

"You have a right to appeal the nursing care facility’s decision to transfer or discharge you. If you think you should not be transferred or discharged, you may appeal to _________ (staff designee). If you do not wish to handle the appeal yourself, you may use an attorney, relative, or friend. If your appeal is not resolved to your satisfaction by the staff designee, you can continue your appeal to the nursing care facility's grievance committee and, if necessary, the Colorado Department of Public Health and Environment. You may direct questions regarding this notice to the Department of Public Health and Environment at_________________________(division name, address and phone number)."

(a) Nursing care facilities that are certified for Medicaid and/or Medicare reimbursement, must also add the following statement: "In addition, if you have questions or complaints about the transfer or discharge or would like help to appeal, call or write the State or Local Long Term Care Ombudsman at ____________(phone numbers/addresses).

(b) If the resident who is being involuntarily transferred is a person with a developmental disability for whom an agency has been authorized by law as the agency responsible for advocacy and protection of the rights of persons with developmental disabilities, the
nursing care facility must also furnish to resident and the resident's family member or legal representative, the following statement:

"In addition, if you have questions or complaints about the transfer or discharge or would like help to appeal, call or write the ____________, (name, phone number and address of the agency.)"

(c) If the resident who is being transferred is a person with mental illness for whom an agency has been authorized by law as the agency responsible for the advocacy and protection of persons with mental illness, the nursing care facility must also furnish to the resident and the resident's family member or legal representative the following statement:

"In addition, if you have questions or complaints about the transfer or discharge or would like help to appeal, call or write the ____________, (name, phone number and address of the agency.)"

12.6.7 In cases where a resident is being involuntarily transferred or discharged from a nursing care facility that is certified to participate in the Medicaid and/or Medicare reimbursement program, a copy of the written notice (including the grievance and appeal rights, and the name, address and telephone number of the State and Local Long Term Care Ombudsman) shall also be sent the State or Local Long Term Care Ombudsman at the same time it is sent to the resident or as soon as the determination is made that the transfer or discharge is involuntary.

12.6.8 A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer and discharge from the facility.

12.7 RESIDENT RELOCATION. If a facility intends to close or change bed classification, it shall notify the Department of Public Health and Environment and the Colorado Department of Health Care Policy And Financing, if it has Medicaid residents, at least 60 days before it expects to cease or change operations and at least 7 days before it notifies residents and families.

12.7.1 The facility shall appoint one staff person to coordinate resident relocation activities.

12.7.2 If the facility has Medicaid residents, it shall review its relocation plan with the Department of Health Care Policy And Financing.

12.7.3 Any facility certified for participation in Medicaid shall follow the relocation procedures prescribed by regulations of the Department of Social Services. Other facilities shall provide for an orderly relocation of residents, designed to minimize risks and ensure optimal placement of all residents, in coordination with the Department of Health, the Nursing Home Ombudsman, and local public and private social services agencies.