59A-4.106 FACILITY POLICIES.

(1) Admission, retention, transfer, and discharge policies:

(a) Each resident will receive, at the time of admission and as changes are being made and upon request, in a language the resident or his representative understands:

...2. A copy of the facility's admission and discharge policies...

(b) Each resident admitted to the facility shall have a contract in accordance with Section 400.151, F.S., which covers:

1. A list of services and supplies, complete with a list of standard charges, available to the resident, but not covered by the facility's per diem or by Title XVIII and Title XIX of the Social Security Act and the bed reservation and refund policies of the facility.

...(f) All resident transfers and discharges shall be in accordance with the facility's policies and procedures, provisions of Sections 400.022 and 400.0255, F.S., this rule, and other applicable state and federal laws and will include notices provided to residents which are incorporated by reference by using AHCA Form 3120-0002, 3120-0002A, Revised May 2001, “Nursing Home Transfer and Discharge Notice,” and 3120-0003, Revised May 2001, “Fair Hearing Request For Transfer or Discharge From a Nursing Home,” and 3120-0004, Revised May 2001, “Long-Term Care Ombudsman Council Request for Review of Nursing Home Discharge and Transfer.” These forms may be obtained from the Agency for Health Care Administration, Long Term Care Unit, 2727 Mahan Drive, MS 33, Tallahassee, FL 32308. The Department of Children and Family Services will assist in the arrangement for appropriate continued care, when requested.

STATUTES:

400.022 Residents’ rights.

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

...(i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII
or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

...(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

...(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.

400.0255 Resident transfer or discharge; requirements and procedures; hearings.

(1) As used in this section, the term:

(a) “Discharge” means to move a resident to a noninstitutional setting when the releasing facility ceases to be responsible for the resident's care.

(b) “Transfer” means to move a resident from the facility to another legally responsible institutional setting.

(2) Each facility licensed under this part must comply with subsection (9) and s. 400.022(1)(p) when deciding to discharge or transfer a resident.

(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or
include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident’s physician, medical director, treating physician, nurse practitioner, or physician assistant. (4)(a) Each facility must notify the agency of any proposed discharge or transfer of a resident when such discharge or transfer is necessitated by changes in the physical plant of the facility that make the facility unsafe for the resident.

(b) Upon receipt of such a notice, the agency shall conduct an onsite inspection of the facility to verify the necessity of the discharge or transfer.

(5) A resident of any Medicaid or Medicare certified facility may challenge a decision by the facility to discharge or transfer the resident.

(6) A facility that has been reimbursed for reserving a bed and, for reasons other than those permitted under this section, refuses to readmit a resident within the prescribed timeframe shall refund the bed reservation payment.

(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident’s legal guardian or representative, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge:

(a) The transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility, and the circumstances are documented in the resident’s medical records by the resident’s physician; or

(b) The health or safety of other residents or facility employees would be endangered, and the circumstances are documented in the resident’s medical records by the resident’s physician or the medical director if the resident’s physician is not available.

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department’s Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form shall state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form shall clearly describe the resident’s appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident’s clinical record, and a copy must be transmitted to the resident’s legal guardian or
representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

(9) A resident may request that the local ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator’s designee, must forward the request for review contained in the notice to the local ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded. (10)(a) A resident is entitled to a fair hearing to challenge a facility’s proposed transfer or discharge. The resident, or the resident’s legal representative or designee, may request a hearing at any time within 90 days after the resident’s receipt of the facility’s notice of the proposed discharge or transfer.

(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

(c) If the resident fails to request a hearing within 10 days after receipt of the facility notice of the proposed discharge or transfer, the facility may transfer or discharge the resident after 30 days from the date the resident received the notice.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the period of time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident’s legal guardian or representative, and the local ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. A local ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident’s file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the local ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident’s legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with the requirements of this section. If requested, the local ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.
(13) The following persons must be present at all hearings authorized under this section:
(a) The resident, or the resident’s legal representative or designee.
(b) The facility administrator, or the facility’s legal representative or designee.

A representative of the local long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from the provisions of s. 119.07(1):
(a) Names and addresses.
(b) Medical services provided.
(c) Social and economic conditions or circumstances.
(d) Evaluation of personal information.
(e) Medical data, including diagnosis and past history of disease or disability.
(f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by a local long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

(15)(a) The department’s Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident’s request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. The burden of proof must be clear and convincing evidence. A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility’s first available bed.
(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the
decision to the district court of appeal in the appellate district where the facility is located.
Review procedures shall be conducted in accordance with the Florida Rules of Appellate
Procedure.

(16) The department may adopt rules necessary to administer this section.

(17) The provisions of this section apply to transfers or discharges that are initiated by the
nursing home facility, and not by the resident or by the resident’s physician or legal
guardian or representative.

400.18 Closing of nursing facility.

(1) In addition to the requirements of part II of chapter 408, the licensee also shall inform
each resident or the next of kin, legal representative, or agency acting on behalf of the
resident of the fact, and the proposed time, of discontinuance of operation and give at least
90 days’ notice so that suitable arrangements may be made for the transfer and care of the
resident. In the event any resident has no such person to represent him or her, the licensee
shall be responsible for securing a suitable transfer of the resident before the
discontinuance of operation. The agency shall be responsible for arranging for the transfer
of those residents requiring transfer who are receiving assistance under the Medicaid
program.

(2) A representative of the agency shall be placed in a facility 30 days before the voluntary
discontinuance of operation, or immediately upon the determination by the agency that the
licensee is discontinuing operation or that existing conditions or practices represent an
immediate danger to the health, safety, or security of the residents in the facility, to:

(a) Monitor the transfer of residents to other facilities.

(b) Ensure that the rights of residents are protected.

(c) Observe the operation of the facility.

(d) Assist the management of the facility by advising the management on compliance with
state and federal laws and rules.

(e) Recommend further action by the agency.

(3) The agency shall discontinue the monitoring of a facility pursuant to subsection (2)
when:

(a) All residents in the facility have been relocated; or

(b) The agency determines that the conditions which gave rise to the placement of a
representative of the agency in the facility no longer exist and the agency is reasonably
assured that those conditions will not recur.