10.07.02.08 ADMISSION AND DISCHARGE.

...E. Notification of Responsible Persons When Patient Moves. The administrator or the administrator's designee shall notify the private or public agency or relative responsible for the patient when the patient is transferred from the facility for any reason or at time of death. The attending physician shall also be notified.

10.07.02.09 RESIDENT CARE POLICIES.

A. Written Policies. Comprehensive care facilities and extended care facilities shall develop written policies, consistent with these regulations, to govern the nursing care and related medical or other services they provide covering the following:

(1) Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility, or those who are required to transfer to another level of care. The facility's admission policy shall include a statement as to whether or not medical assistance patients will be admitted and if admitted, under what circumstances.

10.07.02.14-1 SPECIAL CARE UNITS — GENERAL.

...C. The facility shall obtain Departmental approval of the following pertaining to the special care unit:

...(6) Policies and procedures, including:

(a) The transfer or referral of residents who require services that are not provided by the special care unit.

10.07.02.47 RELOCATION OF RESIDENTS.

A. The facility shall develop and implement a written plan to provide for the smooth and orderly transfer of residents if the facility closes.

B. The plan for relocation shall include:

(1) A description of how residents, families, or guardians will be notified and by whom;

(2) Sample letters and other documents that will be used during a closure;
(3) Procedures for notifying Medicaid and other payment sources;

(4) Procedures for notifying the Office of Health Care Quality; and

(5) A mechanism to ensure the safe and orderly transfer of residents that takes into account:

(a) Roommates, medical care, religious affiliation, geographical location and payer source;

(b) Proper assessment and identification of any special needs;

(c) Transfer of medical information and records; and

(d) Transfer of personal property.

10.07.09.10 RESIDENT TRANSFERS AND DISCHARGES.

A. A nursing facility may not involuntarily transfer or discharge a resident from the nursing facility unless the:

(1) Transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;

(2) Transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the health care or services provided by the nursing facility;

(3) Resident's presence endangers the health or safety of other individuals in the nursing facility;

(4) Resident has failed, after reasonable and appropriate notice, to pay, or to have paid under third-party payers, for a stay at the nursing facility; or

(5) Nursing facility ceases to operate or, in the case of a resident who receives Medicare or Medicaid services, when the nursing facility has been decertified or has withdrawn from the Medicare or Medicaid Program.

B. A resident has a right to request a hearing on the proposed transfer or discharge, except when the transfer or discharge is being taken pursuant to §A(5) of this regulation.

C. Notice.

(1) Transfer and Discharge. Except in emergency situations such as a hospitalization, or if the resident has not resided in the facility for 30 days, the nursing facility shall notify the resident, representative, or interested family member, the State Long-Term Care Ombudsman, and the Department at least:
(a) 30 days before any proposed transfer or discharge if the nursing facility is not part of a continuing care retirement community as defined in Article 70B, Annotated Code of Maryland; or

(b) 60 days before any proposed transfer or discharge if the nursing facility is part of a continuing care retirement community.

(2) Emergency Transfers, Discharges, and Relocations. In an emergency situation, a nursing facility shall notify the resident, representative, or interested family member of a transfer as soon as possible.

D. Contents of Notice. The required notice to a resident under this regulation shall be on a form developed by the Department and shall include:

(1) Each reason for the proposed transfer or discharge;

(2) A statement that the resident has the right to request a hearing on a proposed transfer or discharge, and how to request a hearing pursuant to Regulation .13 of this chapter, except in the case of a discharge made pursuant to §A(5) of this regulation;

(3) The name, address, and telephone number of the State’s Office on Aging and local office on aging long-term care ombudsman;

(4) The right of a resident to consult with any lawyer the resident chooses;

(5) The name, address, and telephone number of the Legal Aid Bureau, The Older American Act Senior Legal Assistance Programs, and other agencies that may provide assistance to individuals who need legal counsel;

(6) 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;

(7) 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;

(8) The effective date of the proposed transfer or discharge which, except as set forth in §C of this regulation, is at least 30 days after receiving the notice and at least 60 days after receipt of the notice if the nursing facility is part of a continuing care retirement center; and

(9) The resident’s rights concerning discharge, as set forth in Regulation .11 of this chapter.

E. Documentation.

(1) In the event of a discharge or transfer of a resident, a nursing facility shall ensure that the following appears in the resident record:
(a) The circumstances surrounding the discharge or transfer, including interventions initiated by the facility before proposing the discharge;

(b) The notice described in C and D of this regulation; and

(c) If applicable, any express consent given by the resident or, when applicable, the resident's representative.

(2) When a resident is transferred or discharged pursuant to §A(1) and (2) of this regulation, the resident’s physician shall document in the resident’s clinical records the reason or reasons why the transfer or discharge is necessary.

(3) When a resident is transferred or discharged pursuant to §A(3) of this regulation, a physician shall document in the resident's clinical records the reason or reasons why the transfer or discharge is necessary.

10.07.09.11 INVOLUNTARY DISCHARGE OR TRANSFER OF A RESIDENT.

A. In addition to the provisions of Regulation .10 of this chapter, a facility may not involuntarily discharge or transfer a resident unless, within 48 hours before the discharge or transfer, the facility has:

(1) Provided or obtained:

(a) A comprehensive medical assessment and evaluation of the resident, including a physical examination, that is documented in the resident’s medical record,

(b) A post-discharge plan of care for the resident that is developed, if possible, with the participation of the resident’s representative, and

(c) Written documentation from the resident’s attending physician indicating that the transfer or discharge is in accordance with the post-discharge plan of care and is not contraindicated by the resident’s medical condition; and

(2) Provided information to the resident concerning the resident’s rights to make decisions concerning health care, including the right to:

(a) Accept or refuse medical treatment,

(b) Make an advance directive, including the right to make a living will and the right to appoint an agent to make health care decisions, and

(c) Revoke an advance directive.

B. With the exception of residents of a certified continuing care facility as set forth in §D of this regulation, at the time of transfer or discharge, the facility shall provide the resident and, when appropriate, the representative or interested family member with:
(1) A written statement of the medical assessment and evaluation and post-discharge plan of care required under §A of this regulation;

(2) A written statement itemizing the medications currently being taken by the resident;

(3) To the extent permitted under federal and State law, at least a 3-day supply of the medications currently being taken by the resident;

(4) Information necessary to assist the resident or the resident's representative in obtaining additional prescriptions for necessary medication through consultation with the resident’s attending physician; and

(5) A written statement containing the date, time, method, mode, and destination of the resident’s discharge.

C. A facility may not discharge or transfer a resident:

(1) Unless the resident or appropriate representative consented in writing to the discharge or transfer; or

(2) Except when the discharge or transfer:

(a) Is in accordance with a post-discharge plan of care developed under §A of this regulation;

(b) Is to a safe and secure environment where the resident will be under the care of a:

(i) Licensed, certified, or registered care provider, or

(ii) Person who has agreed in writing to provide a safe and secure environment.

D. A continuing care facility certified under Article 70B, Annotated Code of Maryland, is not subject to §B of this regulation if the:

(1) Facility transfers a resident to a lesser level of care within the same facility in accordance with a contract between the facility and the resident; and

(2) Transfer is approved by the resident’s attending physician.

E. If the requirements of A-----D of this regulation have been met, the resident’s representative, in conjunction with the facility, shall cooperate and assist in the resident’s discharge planning, including:

(1) Contacting, cooperating with, and assisting other health care facilities considering admitting the resident; and

(2) Cooperating with government agencies, including applying for Medical Assistance for the resident.
F. If requested by a person during the process of transferring or discharging a resident, or on its own initiative, the Office of the Attorney General may investigate whether an abuse of a resident’s funds contributed to the decision to transfer or discharge the resident, and may make appropriate referrals of the matter to other government agencies.

G. The Secretary may impose a civil money penalty not to exceed $10,000 for each:

(1) Violation by a facility of its obligations under this regulation and Regulation .10 of this chapter; or

(2) Willfully or grossly negligent violation by a resident’s representative of the representative’s obligations under this regulation and Regulation .10 of this chapter.

H. If a civil money penalty is imposed under §G of this regulation, the facility or representative has the right to request a hearing on the proposed civil money penalty in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 10.01.04.

I. A resident, resident’s representative, resident’s attorney, or the Attorney General, on behalf of a resident who believes that an involuntary discharge or transfer that violates this regulation is imminent or has taken place, may request appropriate injunctive relief from the appropriate circuit court.

10.07.09.12 RESIDENT RELOCATION AND BED HOLD.

A. Notification of Resident Relocation Within a Facility.

(1) Except in emergency situations or when it is documented in the resident’s record that a resident’s physical, clinical, or psychological well-being would be jeopardized, a nursing facility shall notify a resident or, when applicable, the resident’s representative or interested family member, if available, in writing at least 30 days before the resident is relocated within a facility or to a different part of a facility, unless the resident or, if the resident is incapacitated, the resident’s legally authorized representative, agrees to the relocation and this is documented in the resident’s record.

(2) Under the limited conditions set forth in §A(1) of this regulation where 30-days notice cannot be provided in advance of a relocation, the facility shall document that it has provided notice of the relocation as soon as practicable.

(3) When a resident is relocated, the facility shall elicit and make reasonable efforts to comply with the resident’s request of location and, if applicable, assignment of roommate.

B. A resident’s right to refuse a change in room assignment under §A of this regulation does not affect the resident’s eligibility or entitlement to Medicaid benefits.

C. Notice.
(1) Notice of Bed-Hold Policy at the Time of Admission. At the time of admission, a nursing facility shall provide written information to a resident or, when applicable, the resident’s representative or interested family member, describing the facility’s bed-hold policy, including the period of time during which the resident is permitted to return and resume residence in the nursing facility.

(2) Notice of Bed-Hold Policy at Time of Transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility shall provide a written notice to the resident, or when applicable, the resident’s representative or interested family member, which specifies the duration of the bed-hold policy described in §C of this regulation.

D. Permitting a Resident to Return to the Nursing Facility. When a resident’s hospitalization or therapeutic leave exceeds the bed-hold period under the State Medicaid plan, the resident has a right to be readmitted to the nursing facility immediately upon the first availability of a bed in a semiprivate room if the resident:

(1) Requires the services provided by the nursing facility; and
(2) Is eligible for Medicaid coverage for the nursing facility’s services.

E. Unless the bed hold has expired, for purposes of this regulation, transfer includes the refusal of a nursing facility to accept the return of a resident who was previously transferred from the nursing facility:

(1) Whose bed at the nursing facility was continuously reserved or required to be reserved through payment to the nursing facility from any source; or
(2) Who had an application for medical assistance pending at the time of the transfer if there is no reason to believe that the application will not be approved.

F. Transfer and Discharge Planning. In addition to the requirements of Regulation .11 of this chapter, a nursing facility shall provide, in all cases, orientation and planning to residents to ensure safe and orderly transfer of discharge from the nursing facility.

10.07.09.13 HEARINGS FOR TRANSFERS AND DISCHARGES, AND ESTABLISHMENT OF AN ESCROW ACCOUNT.

A. A resident may request a hearing within 30 days of receiving a notice of an intended involuntary transfer or discharge as provided in Regulation .10C of this chapter,

B. Except in an emergency or when the resident has resided in a facility for less than 30 days, after a request for a hearing has been filed, a nursing facility may not discharge or transfer the resident until:

(1) A final decision is issued after the hearing and all requirements of Regulation .11 of this chapter are met; or
(2) The resident consents to the discharge or transfer and withdraws the request for a hearing.

C. Procedure.

(1) The resident shall send a written request for a hearing to the Office of Administrative Hearings by the 30th calendar day after the resident receives the nursing facility’s notice of the proposed transfer or discharge.

(2) After receiving the written request, the Office of Administrative Hearings shall schedule a hearing.

(3) The Office of Administrative Hearings shall conduct the hearing in accordance with COMAR 10.01.04 and 28.02.01.

(4) The Department is not a party to a hearing conducted pursuant to this regulation. The parties are the nursing facility and the resident. Therefore, a hearing conducted pursuant to this regulation is not a contested case as defined in the Administrative Procedure Act, State Government Article, §10-202, Annotated Code of Maryland.

D. A facility may require that an escrow account be established when the:

(1) Basis for a resident’s discharge is nonpayment; and

(2) Resident continues to reside in the facility pending a final decision.

E. If an escrow account is required under §D of this regulation, the facility shall develop a policy and procedure that is acceptable to the Department concerning the establishment and disposition of funds from the escrow account.