HE-E 802.14 TEMPORARY ABSENCE FROM THE NURSING FACILITY.

(b) If a resident is transferred to a hospital or for therapeutic leave:

(1) The certified facility shall hold the bed open for the resident for 10 calendar days or such longer period of time as may be provided by the nursing facility's bed-hold policies as long as:

a. It is reasonable to expect that the resident will return during this time; and

b. The resident, a member of the resident's family, the resident's legal representative or another person acting on the resident's behalf, offers payment for the period of absence or payment for the period of absence is payable by Medicaid as a reserved bed day;

(2) The certified facility shall not charge an amount in excess of the Medicaid rate to hold a bed for a resident who is on Medicaid; and

(3) The facility shall communicate with the hospital to the extent reasonably necessary in order to monitor the resident's progress and plan for the resident's safe and orderly transition back to the nursing facility.

(e) Any transfer made under He-E 802.14 shall be considered temporary in nature, with the resident returning to the transferring facility when the resident's condition is stabilized. Any certified facility that refuses to readmit or wishes to discharge or transfer a resident during or following a hospitalization or therapeutic leave shall comply with the requirements of He-E 802.15 through He-E 802.17.

HE-E 802.15 TRANSFER OR DISCHARGE OF RESIDENTS.

(a) A certified facility shall establish and maintain identical policies and practices for all individuals, regardless of the payment source, regarding transfers, discharges, and the provision of services required under the state Medicaid program.

(b) The certified facility shall not transfer or discharge a resident unless the resident is being transferred or discharged for one of the following reasons, as documented in the notice described in He-E 802.17:
(1) The resident’s health has improved sufficiently so that the resident no longer needs the services provided by the facility, as documented in the resident’s clinical record by the resident’s personal physician or ARNP; (2) The transfer or discharge is necessary for the resident's welfare and the resident’s needs cannot be met in the facility, as documented in the resident’s clinical record by the resident's personal physician or ARNP;

(3) The safety, health, or both, of other residents in the facility is endangered, as documented in the resident’s clinical record by a physician;

(4) The resident has failed, after reasonable notice, to pay for or to have paid under Medicare or Medicaid the charges accrued during his/her stay at the facility, as documented in the resident's record, and:

(5) The facility ceases to operate.

c) The facility shall not transfer or discharge a resident unless the facility has compiled with He-E 802.15 through He-E 802.18, as applicable.

d) A resident shall not be transferred or discharged from a swing-bed if the sole reason for the proposed transfer or discharge is because the hospital is in need of a hospital bed rather than a nursing facility bed.

e) No resident shall be transferred or discharged with less than 30 days’ notice from the date the notice of transfer or discharge is received by the resident except for one of the following reasons:

(1) The resident chooses to leave the facility; or

(2) The facility has explored other reasonable alternatives, and documented these in the resident's record, but transfer or discharge of the resident is necessary for one of the following reasons:

a. The resident’s health improves sufficiently to allow a more immediate transfer or discharge, in accordance with He-E 802.15(b)(1);

b. An immediate transfer or discharge is required by the resident’s urgent medical needs pursuant to He-E 802.15(b)(2), and is in accord with the written orders and medical justification of the resident’s personal physician or ARNP; or

c. The safety or health of other residents in the nursing facility would be endangered, under He-E 802.15(b)(3), as documented in the resident’s clinical record and after consultation with the resident’s personal physician; or

d. A resident has resided in the facility for less than 30 days.
(f) When the resident is transferred or discharged, reasonable efforts shall be made to relocate the resident to a setting of his or her choosing.

(g) The facility shall make, and document in the resident’s record, reasonable efforts to work with the resident, the resident’s legal representative, or the resident’s family to resolve any payment problem prior to transfer or discharge.

(h) For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid.

Source. #7751, eff 8-17-02

HE-E 802.16 TRANSFER OR DISCHARGE PLAN.

(a) Certified facilities shall provide sufficient preparation and assistance to residents in order to ensure their safe and orderly transfer or discharge from the facility.

(b) No resident shall be transferred or discharged unless there is a written transfer or discharge plan, which includes the following:

(1) The circumstances surrounding the discharge or transfer, including:

a. Alternative interventions initiated by the nursing facility before the facility proposed the discharge or transfer;

b. The fact that the facility has exhausted all reasonable alternatives short of transfer or discharge; and

c. Whether the facility used the services of the ombudsman program as described in RSA 161-F:10 and if not, why not;

(2) All efforts that were made to locate the resident to the setting of his or her choice, and if the resident’s wishes could not be accommodated, the reasons why;

(3) The location of the new setting and, if a facility, confirmation that the facility has accepted the resident;

(4) A comprehensive description of the medical, social, and rehabilitative needs of the resident and how the resident’s needs will be met in the new setting;

(5) Documentation of consultation with the resident, family or other interested parties, if and to the extent that this has been reasonably possible; and
(6) The medical opinion of the resident’s personal physician regarding the transfer or discharge, including the possible effects on the physical and emotional well-being of the resident.

(c) A copy of the transfer or discharge plan shall be provided to:

(1) The resident and his/her legal representative;

(2) The office of the state long term care ombudsman; and

(3) DEAS.

Source. #7751, eff 8-17-02

HE-E 802.17 NOTICE BEFORE TRANSFER OR DISCHARGE.

(a) Before a certified facility transfers or discharges a resident, including a transfer or discharge with less than 30 days notice, the facility shall consult with the resident’s personal physician or ARNP and provide written notice, as specified in (b) below, to the following parties, in a language and manner that they understand:

(1) The resident and the resident’s legal representative; and

(2) Family members, if known, in accordance with instructions or limitations given by the resident.

(b) The notice specified in (a) above shall include the following information:

(1) The basis for the proposed transfer or discharge, including the specific circumstances leading up to the proposal and a reference to the applicable section(s) of He-E 802.15(b);

(2) The effective date of the transfer or discharge;

(3) The location where the resident is proposed to be transferred or discharged;

(4) A statement that shall read: "You have a right to appeal the facility’s decision to transfer or discharge you. If you think you should not have to leave this facility, you may file an appeal in superior or probate court pursuant to RSA 151:26 IV, or request an administrative hearing;"
(5) A statement regarding the resident's right to an administrative hearing pursuant to He-C 200, which includes:

a. A statement that the hearing is required to be requested in writing by the resident or his/her representative within 90 days of receiving the notice;

b. A statement that the resident may represent himself/herself at the hearing or use legal counsel, a relative, a friend or another advocate or representative;

c. A statement indicating that if a request for a hearing is filed within 20 days of receipt of the notice:

1. The resident shall be allowed to remain in the facility until a final decision is made by the administrative appeals unit, except as may be allowable under the provisions of He-E 802.15(e); and

2. That if the resident receives Medicaid, payments to the facility shall continue while the appeal is pending; and

d. With regard to transfers/discharges involving less than 30 days notice, a statement informing the resident of his/her right to an expedited hearing, as described in He-E 802.18(d);

(6) The name, mailing address and telephone number of the office of the state long term care ombudsman and a summary of the statutory responsibilities of that office;

(7) For certified facility residents who are 60 years of age or older, the name, address and telephone number of the provider(s) of legal services under Title VII of the Older Americans Act;

(8) For certified facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals as established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(9) For certified 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.

(c) In accordance with RSA 151:26 II(a)(5), a copy of the notice specified in (a) above shall be transmitted to the office of the ombudsman established under RSA 161-F:10, the agency identified in He-E 802.17(b)(8) or (9) if the resident is mentally retarded or mentally ill, and the person or agency responsible for the patient's placement, maintenance, and care in the facility.
(d) When the notice is delivered to the resident, facility staff shall:

(1) Communicate orally to the resident, in a language he or she understands, all information contained in the written notice, or, if the resident is hearing-impaired or cannot communicate orally due to a disability, consult with DEAS on how to make reasonable accommodation for communicating with the resident;

(2) Offer to help the resident contact a family member, legal representative, the office of the state long term care ombudsman, or any of the organizations identified in the notice; and

(3) Document the date and time of the notification and offer of assistance in the resident's record.

(e) The facility shall provide the resident with written material that describes residents’ rights, including the rights of a resident in the event of a proposed transfer or discharge from the facility.

(f) The facility shall document delivery of the notice to the resident by:

(1) Requesting the signature of the resident on a dated statement of receipt, if the resident is able and willing to sign a receipt;

(2) Recording the date of delivery to the resident in the resident’s record; and

(3) Recording whether and when the notice was mailed to the resident’s legal representative or family members.

(g) If less than 30 days notice of a transfer or discharge is given as allowed by He-E 802.15(e), the facility, in addition to all other requirements of He-E 802.17, shall: (1) Provide verbal notice to the resident and/or his legal representative and to family members in accordance with any instructions or limitations given by the resident;

(2) As soon as possible, follow the verbal notice with written notice to the above-mentioned parties;

(3) Document the date and time of the notification in the resident's record.

Source. #7751, eff 8-17-02

HE-E 802.18 APPEALING TRANSFERS OR DISCHARGES.
(a) Any resident being transferred or discharged, including any resident who asserts that his or her bed-hold right or right to readmission under He-E 802.14 has been denied, may appeal the transfer or discharge in accordance with the provisions contained in these rules and in He-C 200.

(b) The request for an appeal shall be submitted within 90 days after the resident receives written notice of a proposed transfer or discharge, in compliance with He-E 802.17, or within 90 days of the date the resident learns of the right to appeal if the facility fails to provide the required written notice.

(c) If a resident requests a hearing within 20 days after receiving the notice from the facility, the resident’s transfer or discharge shall be suspended until after the hearing decision is issued, and the resident shall not be transferred or discharged from the facility except as allowed under the provisions of He-E 802.15(e).

(d) In the event of a transfer or discharge with less than 30 days notice under the provisions of He-E 802.15(e), a resident may request an expedited hearing, subject to the following conditions:

(1) The request for an expedited hearing shall be made within 10 calendar days of the notice of transfer or discharge;

(2) An expedited hearing shall be held within 5 working days of the request for hearing; and

(3) The hearing decision shall be issued:

a. Within 3 working days of the hearing if the resident has been moved out of the facility and the resident requested an expedited hearing; or

b. Within 15 working days of the hearing in all other cases.

(e) The following shall govern computation of time with respect to administrative appeals of transfer or discharge decisions:

(1) In computing any period of time prescribed or allowed by these rules, the day of the act, event or determination from which the designated period of time begins to run shall not be included;

(2) Unless otherwise specified, when the period of time prescribed or allowed is less than 10 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation; and
(3) The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday as specified in RSA 288.

(f) A hearing may be requested by a resident, his or her legal representative or anyone acting on behalf of a resident, including a certified facility, the department, a family member or a friend.

(g) Any employee or agent of the facility or the department who becomes aware that a resident has expressed a desire to have his/her transfer or discharge reviewed shall assist the resident in writing and submitting his or her request for a hearing, or shall submit the request on behalf of the resident if the resident is not able to do so. (h) The request for a hearing shall be submitted in writing, with a copy of the facility’s notice of transfer or discharge, to the NH Department of Health and Human Services, Administrative Appeals Unit, 105 Pleasant Street, Concord, NH 03301.

(i) The resident and the facility shall be considered parties to any appeal filed by a resident contesting a transfer or discharge pursuant to He-C 200.

(j) When feasible, all hearings shall be conducted at the facility where the resident is located.

(k) The resident or his/her legal representative shall:

(1) Upon an oral or written request, be given access to all records pertaining to the resident, including current clinical records, within 24 hours, excluding weekends and holidays; and

(2) After receipt of his or her records for inspection, to purchase at a cost not to exceed 25 cents per page, photocopies of the records or any portions of them upon request and after providing advance notice of 2 working days to the certified facility.

(l) The administrative appeals unit shall request a medical or psychological evaluation of the resident, if such would assist in the resolution of the matter under appeal, and a funding source is available.

(m) A certified facility seeking to transfer or discharge a resident shall have the burden of proving by clear and convincing evidence that the transfer complies with the requirements of He-E 802.15.

(n) The following actions shall be taken following the administrative appeal unit's decision:

(1) If the decision upholds the discharge or transfer, the resident shall be relocated;
(2) If the hearing decision does not uphold the discharge or transfer, the resident shall not be relocated;

(3) If the decision by the administrative appeals unit does not uphold the transfer or discharge of a resident who has been transferred or discharged pursuant to the provisions of He-E 802.15, the resident shall be readmitted to the facility’s first available bed; and

(4) If the administrative appeals unit approves a transfer or discharge, the facility shall have prepared a discharge plan as required by He-E 802.16, prior to relocating the resident to an appropriate new location

Source. #7751, eff 8-17-02

HE-P 803.15 REQUIRED SERVICES.

...(b) Prior to or upon the time of admission, the licensee shall provide the resident a written copy of the admission agreement, except in the case of an emergency admission where the written agreement shall be given as soon as practicable.

(c) In addition to (b) above, at the time of admission, the licensee shall provide a written copy to the resident and the guardian or agent, if any, or personal representative, and receive written verification of receipt for the following:

(1) An admissions packet including the following information:

a. The basic daily, weekly or monthly rate;

b. A list of the core services required by He-P 803.14(b);

c. Information regarding the timing and frequency of cost of care increases;

...e. The grounds for transfer or discharge and termination of the agreement, pursuant to RSA 151:21, V;

f. The nursing home’s policy for resident discharge planning;

g. Information regarding nursing, other health care services, or supplies not provided in the core services, to include:

1. The availability of services;

2. The nursing home’s responsibility for arranging services; and

3. The fee and payment for services, if known; and

h. Information regarding:
2. Arranging for the provision of third party services, such as a hairdresser or cable television;

3. Acting as a billing agent for third party services;

4. Monitoring third party services contracted directly by the resident and provided on the nursing home premises;

...6. Bed hold, in compliance with RSA 151:25...

...(3) A copy of the resident’s right to appeal an involuntary transfer or discharge under RSA 151:26, II(5)...

**HE-P 803.22 RESIDENT TRANSFER OR DISCHARGE. TRANSFERS AND DISCHARGES SHALL BE DONE IN ACCORDANCE WITH RSA 151:26.**

151:26 Transfer or Discharge of Patients. –
I. A facility shall not transfer or discharge a patient except for those reasons listed under RSA 151:21, V.

II. (a) Transfer or discharge of a patient shall in all instances be preceded by written notice which shall contain the following:
(1) The reason for the proposed transfer or discharge;
(2) The effective date of the proposed transfer or discharge;
(3) The location to which the patient is transferred or discharged;
(4) The name, address and telephone number of the long-term care ombudsman, established under RSA 161-F:10, and the name, address, and telephone number of the federally-designated protection and advocacy agency for individuals with disabilities;
(5) A statement which shall read: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file an appeal in superior or probate court." If the patient is in a skilled nursing facility or nursing facility certified under Title XVIII or Title XIX of the Social Security Act, the statement shall inform the patient of his or her right to request an administrative hearing before the department of health and human services.

Except as specified in paragraph II(b) of this section, written notice of transfer or discharge shall be given at least 30 days before the resident is transferred or discharged. A copy of the notice shall be placed in the patient’s clinical record and a copy shall be transmitted to the patient, the patient’s personal representative, legal guardian, the long-term care ombudsman, established under RSA 161-F:10, and the federally-designated protection and advocacy agency for individuals with disabilities.

(b) Written notice as specified in subparagraph II(a) shall be given as soon as practicable before transfer or discharge in the following circumstances:
(1) If an emergency transfer or discharge is mandated by the patient’s health care needs
and is in accord with the written orders and medical justification of the patient’s physician or advanced practice registered nurse (APRN);
(2) If the transfer or discharge is mandated by the health or safety of other individuals in the facility, as documented in the patient’s clinical record upon consultation with the patient's physician or advanced practice registered nurse (APRN);
(3) If the patient's health has improved sufficiently so the patient no longer needs the services provided by the facility, as documented in the patient’s clinical record by the patient's physician or advanced practice registered nurse (APRN); or
(4) If the patient has resided in the facility for less than 30 days.
(c) The basis for the transfer or discharge shall be documented in the patient’s clinical record. The facility shall consult with the patient’s physician or advanced practice registered nurse prior to transferring or discharging the patient for medical reasons or for the patient’s welfare or that of other patients. The documentation of the basis for the transfer or discharge shall be made by:
(1) The patient’s physician or advanced practice registered nurse (APRN) if the transfer or discharge is necessary because the patient's needs cannot be met in the facility;
(2) The patient’s physician or advanced practice registered nurse (APRN) if the transfer or discharge is appropriate because the patient's health has improved sufficiently so the patient no longer needs the services provided by the facility;
(3) A physician or advanced practice registered nurse (APRN) if the health of individuals in the facility would be endangered.
III. Transfer or discharge of a patient of a skilled nursing facility or nursing facility certified under Title XVIII or Title XIX of the Social Security Act shall take into account any additional rights and safeguards prescribed by the commissioner of the department of health and human services and the secretary of the United States Department of Health and Human Services.
IV. Upon notice, a patient may petition the superior or probate court to enjoin the facility's decision to transfer or discharge. This petition shall stay any transfer or discharge pending a decision.
V. For the purposes of this section, "transfer" or "discharge" shall not include transfers or discharges initiated at the request of the patient or his or her legal guardian, except that transfer or discharge of a resident from a nursing home certified under federal law even if initiated at the request of the resident or his or her legal guardian shall be subject to all federal notice requirements.
VI. If the patient or his or her legal guardian wishes to have the patient relocate to another facility or place, the patient shall be relocated according to the patient’s or legal guardian’s wishes; provided, that the patient or legal guardian gives written notice of such relocation to the facility.