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AND MEDICAID CERTIFICATION****SUBCHAPTER F****ADMISSION, TRANSFER, AND DISCHARGE RIGHTS IN
MEDICAID-CERTIFIED FACILITIES****RULE §19.501****Admissions Policy for Medicaid-certified Facilities**

(a) The facility must not require:

- (1) residents or potential residents to waive their rights to Medicare or Medicaid; and
- (2) oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(b) The facility must not require a third-party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(c) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission, or continued stay in the facility. However, a nursing facility may:

- (1) charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of these additional services; and
- (2) solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid-eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid-eligible resident.

Source Note: The provisions of this §19.501 adopted to be effective May 1, 1995, 20 TexReg 2393.

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MEDICAID-CERTIFIED FACILITIES****RULE §19.502****Transfer and Discharge in Medicaid-certified Facilities**

(a) Definition. Transfer and discharge includes movement of a resident to a bed outside the certified facility, whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement within the same certified facility.

(b) Transfer and discharge requirements. The facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless:

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

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

(3) the safety of individuals in the facility is endangered;

(4) the health of other individuals in the facility would otherwise be endangered;

(5) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

(6) the resident, responsible party, or family or legal representative requests a voluntary transfer or discharge;
or

(7) the facility ceases to operate or participate in the program which pays for the resident's care. See §19.2310 of this title (relating to Nursing Facility Ceases to Participate). If the facility voluntarily withdraws from participation in Medicaid, but continues to provide nursing facility services:

(A) the facility's voluntary withdrawal from Medicaid is not an acceptable basis for the transfer or discharge of residents who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to Medicaid assistance as of such day);

(B) for individuals who begin residence in the facility after the effective date of the withdrawal, the facility must provide notice orally and in a prominent manner in writing on a separate page of the admission agreement at the time the resident begins residence and document receipt in writing, signed by the individual, and separate from other documents signed by the individual of the following information:

(i) The facility is not participating in the Medicaid program with respect to these residents.

(ii) The facility may transfer or discharge these residents if they are unable to pay the charges of the facility, even though the resident may have become eligible for Medicaid nursing facility services.

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in subsection (b)(1)-(5) of this section, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when transfer or discharge is necessary under subsection (b)(1) or (2) of this section; and

(2) a physician when transfer or discharge is necessary under subsection (b)(4) of this section.

(d) Notice before transfer. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a responsible party or family or legal representative of the resident about the transfer or discharge and the reasons for the move in writing and in a language and manner they will understand;

(2) record the reasons in the resident's clinical record; and

(3) include in the notice the items described in subsection (f) of this section.

(e) Timing of the notice.

(1) Except when specified in paragraph (3) of this subsection, the notice of transfer or discharge required under subsection (d) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(2) The requirements described in paragraph (1) of this subsection and subsection (g) of this section do not have to be met if the resident, responsible party, or family or legal representative requests the transfer or discharge.

(3) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered, as specified in subsection (b)(3) of this section;

(B) the health of individuals in the facility would be endangered, as specified in subsection (b)(4) of this section;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge, as specified in subsection (b)(2) of this section;

(D) the transfer and discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility, as specified in subsection (b)(1) of this section, and the resident's urgent medical needs require an immediate transfer or discharge; or

(E) a resident has not resided in the facility for 30 days.

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the state office LTC-R Customer Service Section of the Texas Department of Human Services (DHS) to report their intention to discharge; and

(B) submit the required physician documentation regarding the discharge.

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or 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 as outlined in DHS's Fair Hearings, Fraud, and Civil Rights Handbook by requesting a hearing through the Medicaid eligibility worker at the local DHS office within 10 days;

(5) the name, address, and telephone number of the regional representative of the Office of the State Long Term Care Ombudsman, Texas Department on Aging, and of the toll-free number of the Texas Long Term Care Ombudsman, 1-800-252-2412;

(6) in the case of a resident with mental illness or mental retardation, the address and phone number of the state mental health/mental retardation authority, which is: Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, 1-800-252-8154; and the phone number of the agency responsible for the protection and advocacy of persons with mental illness or mental retardation and/or related conditions, which is: Advocacy Incorporated, 7800 Shoal Creek Boulevard, Suite 175-E, Austin, Texas 78757, 1-800-252-9108.

(g) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(h) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

(1) the reasons for the relocation;

(2) the effective date of the relocation; and

(3) the room to which the facility is relocating the resident.

(i) Fair hearings.

(1) Individuals who receive a discharge notice from a facility have 10 days to appeal. If the recipient appeals, he may remain in the facility, except in the circumstances described in subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to Long Term Care-Regulatory for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

Source Note: The provisions of this §19.502 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective January 1, 2000, 24 TexReg 11781; amended to be effective August 1, 2000, 25 TexReg 6779

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MEDICAID-CERTIFIED FACILITIES****RULE §19.503****Notice of Bed-Hold Policy and Readmission in Medicaid-
certified Facilities**

(a) Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies:

(1) the duration of the bed-hold policy under the Medicaid State Plan (see §19.2603 of this title (relating to Therapeutic Home Visits Away from the Facility) if any, during which the resident is permitted to return and resume residence in the facility; and

(2) the facility's policies regarding bed-hold periods, which must be consistent with subsection (c) of this section, permitting a resident to return.

(b) Bed-hold notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative, written notice which specifies the duration of the bed-hold policy described in subsection (a) of this section.

(c) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the State Plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(1) requires the services provided by the facility; and

(2) is eligible for Medicaid nursing facility services.

(d) Bed-hold charges. The facility may enter into a written agreement with the recipient or responsible party to reserve a bed.

(1) The facility may charge the recipient an amount not to exceed the DHS daily vendor rate according to the recipient's classification at the time the individual leaves the facility.

(2) The facility must document all bed-hold charges in the recipient's financial record at the time the bed-hold reservation services were provided.

(3) The facility may not charge a bed-hold fee if the Texas Department of Human Services (DHS) is paying for the same period of time, as in a three-day therapeutic home visit.

Source Note: The provisions of this §19.503 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314.

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MEDICAID-CERTIFIED FACILITIES**RULE §19.504****Equal Access to Quality Care in Medicaid-certified Facilities**

(a) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the Medicaid State Plan for all individuals regardless of source of payment.

(b) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in §19.403(h) and (i) of this title (relating to Notice of Rights and Services).

(c) The Texas Department of Human Services is not required to offer additional services on behalf of a recipient other than services provided in the State Plan.

Source Note: The provisions of this §19.504 adopted to be effective May 1, 1995, 20 TexReg 2393.

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RULE §19.505

Discharge Planning in Medicaid-certified Facilities

Discharge planning must be done by appropriate facility staff in accordance with the provisions outlined in §19.803 of this title (relating to Discharge Summary (Discharge Plan of Care)).

Source Note: The provisions of this §19.505 adopted to be effective May 1, 1995, 20 TexReg 2393.

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