

F626

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§483.15(e)(1) Permitting residents to return to facility.

A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.

- (i) A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semi-private room if the resident—
 - (A) Requires the services provided by the facility; and
 - (B) Is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.
- (ii) If the facility determines that a resident who was transferred with an expectation of returning to the facility, cannot return to the facility, the facility must comply with the requirements of paragraph (c) as they apply to discharges.

§483.15(e)(2) Readmission to a composite distinct part. When the facility to which a resident returns is a composite distinct part (as defined in § 483.5), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of return, the resident must be given the option to return to that location upon the first availability of a bed there.

INTENT

To ensure that facilities develop **and implement** policies that address *permitting residents to return to the facility after a hospitalization or therapeutic leave*. Specifically, residents who are hospitalized or on therapeutic leave are allowed to return *to the facility* for skilled nursing or nursing facility care or services. *When a facility does not allow the resident to return, the facility has initiated a discharge, and the facility must comply with Transfer and Discharge Requirements at §483.15(c).* The resident must be permitted to return and resume residence in the facility while an appeal *of the discharge* is pending.

DEFINITIONS

Bed-hold: Holding or reserving a resident's bed while the resident is absent from the facility for therapeutic leave or hospitalization.

“Composite Distinct Part”: A composite distinct part is a distinct part consisting of two or more noncontiguous components that are not located within the same campus, as that term is defined in §413.65(a)(2). *The definition and additional requirements specific to SNF/NF composite distinct parts are found at §483.5.*

“Campus”: Campus is defined in §413.65(a)(2) and means the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by the CMS regional office, to be part

of the provider's campus.

“Distinct Part”: A distinct part SNF or NF is physically distinguishable from the larger institution or institutional complex that houses it, meets the requirements of paragraph (2) of *this definition at §483.5*, and meets the applicable statutory requirements for SNFs or NFs in sections 1819 or 1919 of the Act, respectively. A distinct part SNF or NF may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are: In the same physical area immediately adjacent to the institution's main buildings; other areas and structures that are not strictly contiguous to the main buildings but are located within close proximity of the main buildings; and any other areas that CMS determines on an individual basis, to be part of the institution's campus. A distinct part must include all of the beds within the designated area, and cannot consist of a random collection of individual rooms or beds that are scattered throughout the physical plant. The term “distinct part” also includes a composite distinct part that meets the additional requirements *specified in the definition of “composite distinct part” of §483.5 described above*. Requirements specific to *distinct part* SNFs or NFs are found at §483.5.

“Therapeutic Leave”: Resident absences for purposes other than required hospitalization.

GUIDANCE §483.15(e)

Facilities must develop and implement policies for bed-hold and permitting residents to return following hospitalization or therapeutic leave. ***These policies apply to all residents, regardless of their payment source.*** The facility policies must *provide that residents who seek to return to the facility within the bed-hold period defined in the State plan are allowed to return to their previous room, if available. Additionally, residents who seek to return to the facility after the expiration of the bed-hold period or when state law does not provide for bed-holds are allowed to return to their previous room if available or immediately to the first available bed in a semi-private room provided that the resident:*

- *Still requires the services provided by the facility; and*
- *Is eligible for Medicare skilled nursing facility or Medicaid nursing facility services.*

The policies must also provide that if the facility determines that a resident cannot return, the facility must comply with the requirements of paragraph at 42 CFR 483.15(c) as they apply to facility-initiated discharges.

Medicaid-eligible residents must be permitted to return to the first available bed even if the residents have outstanding Medicaid balances.

Not Permitting Residents to Return

Not permitting a resident to return following hospitalization or therapeutic leave *constitutes a facility-initiated discharge and* requires a facility to meet the requirements as outlined in §483.15(c)(1)(ii). A facility must not discharge a resident unless:

1. The discharge or transfer is necessary for the resident's welfare and the facility cannot meet the resident's needs.
2. The resident's health has improved sufficiently so that the resident no longer needs the services of the facility.
3. The resident's clinical or behavioral status endangers the safety of individuals in the

facility.

4. The resident's clinical or behavioral status endangers the health of individuals in the facility.
5. The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) his or her stay at the facility *which applies if:*
 - the resident does not submit the necessary paperwork for third party payment; or
 - the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay.
6. The facility ceases to operate.

For concerns related to a facility not permitting a resident to return, the surveyor should investigate to determine if the basis for discharge meets one of the requirements *listed above which are also found at F622, §483.15(c)(1)(i)(A) through (F)*.

As noted at §483.15(c)(2)(i)(B), when the facility transfers or discharges a resident for the resident's welfare, or because the resident's needs cannot be met in the facility, the medical record must contain documentation of the specific resident needs that cannot be met, facility attempts to meet those needs, and the service available at the receiving facility to meet the needs.

Resident decisions to refuse care should not be considered a basis for transfer or discharge unless the refusal poses a risk to the resident's or other individuals' health and/or safety. In situations where a resident's choice to refuse care or treatment poses a risk to the resident's or others' health or safety, the comprehensive care plan must identify the care or service being declined, the risk the declination poses to the resident, and efforts by the interdisciplinary team to educate the resident and the representative, as appropriate (See F656, §483.21(b)(1)(ii), Comprehensive Care Plans.)

If unable to resolve situations where a resident's refusal for care poses a risk to the resident's or others' health or safety, the facility administration, nursing and medical director may wish to convene an ethics meeting, which includes legal consultation, in order to determine if the facility can meet the resident's needs, or if the resident should be transferred or discharged.

If a facility does not permit a resident who went on therapeutic leave to return, the facility must meet the requirements for a facility-initiated discharge at F622. Because the facility was able to care for the resident prior to therapeutic leave, documentation related to the basis for discharge must clearly show why the facility can no longer care for the resident.

Additionally, facilities must not treat situations where a resident goes on therapeutic leave and returns later than agreed upon, as a resident-initiated discharge. The resident must be permitted to return and be appropriately assessed for any ill-effects from being away from the facility longer than expected, and provide any needed medications or treatments which were not administered because they were out of the building. If a resident has not returned from therapeutic leave as expected, the medical record should show evidence that the facility attempted to contact the resident and resident representative. The facility must not initiate a discharge unless it has ascertained from the resident or resident representative that the resident does not wish to return.

NOTE: *Situations in which residents sign out of the facility or leave Against Medical Advice (AMA) should be thoroughly investigated to determine if the discharge is facility- or resident-initiated. If evidence reveals that a resident or resident representative was forced, pressured,*

or intimidated into leaving AMA, the discharge would be considered a facility-initiated discharge, requiring further investigation to determine compliance with the requirements at 483.15(c), including the requirement to provide a notice at F623. See additional guidance on AMA discharges at F660 and guidance on Abuse, Neglect and Exploitation at F600.

A facility may have concerns about permitting a resident to return to the facility after a hospital stay due to the resident's clinical or behavioral condition at the time of transfer.

The facility must not evaluate the resident based on his or condition when originally transferred to the hospital. If the facility determines it will not be permitting the resident to return, the medical record should show evidence that the facility made efforts to:

- Determine if the resident still requires the services of the facility and is eligible for Medicare skilled nursing facility or Medicaid nursing facility services.
- Ascertain an accurate status of the resident's condition—this can be accomplished via communication between hospital and nursing home staff and/or through visits by nursing home staff to the hospital.
- Find out from the hospital the treatments, medications, and services the facility would need to provide to meet the resident's needs *upon returning to the facility*. If the facility is unable to provide the treatments, medications, and services needed, the facility may not be able to meet the resident's needs. For example, a resident *now requires ventilator care or dialysis*, and the nursing home is unable to provide this same level of care.
- Work with the hospital to ensure the resident's condition and needs are within the nursing home's scope of care, based on its facility assessment, prior to hospital discharge. For example, the nursing home could ask the hospital to:
 - Attempt reducing a resident's psychotropic medication prior to discharge and monitor symptoms so that the nursing home can determine whether it will be able to meet the resident's needs upon return;
 - Convert IV medications to oral medications and ensure that the oral medications adequately address the resident's needs.

If the facility does not permit a resident's return to the facility (i.e., initiates a discharge) based on inability to meet the resident's needs, documentation must be in accordance with requirements at §483.15(c)(2)(i)(B). The facility must notify the resident, his or her representative, and the LTC ombudsman in writing of the discharge, including notification of appeal rights. (§483.15(c)(3) and (5)(iv)) If the resident chooses to appeal the discharge, the facility must allow the resident to return to his or her room or an available bed in the nursing home during the appeal process, unless there is documented evidence that the resident's return would endanger the health or safety of the resident or other individuals in the facility. (§483.15(c)(1)(ii))

For concerns regarding notification of discharge, and the resident's right to appeal the discharge, refer to the regulation and guidance at §§483.15(c)(3)-(5)(F623).

Composite Distinct Part

If a facility does not have a composite distinct part, §483.15(e)(2) does not apply. When a resident is returning to a composite distinct part, he/she must be allowed to return to an available bed in the particular location of the composite distinct part in which he/she resided previously, or the next available bed in that location.

NOTE: *If there are concerns as to whether or not a facility is appropriately certified as a distinct or composite distinct part, consult with the CMS Regional Office for clarification.*

INVESTIGATIVE PROTOCOL

Use the Critical Element (CE) Pathways for Discharge, or Hospitalization, as appropriate, along with the above interpretive guidelines when determining if the facility meets the requirements for, or investigating concerns related to the facility requirements to permit residents to return following hospitalization or therapeutic leave.

Summary of Investigative Procedure

If concerns arise regarding facility failure to permit a resident to return, review the medical record for evidence of whether a notice of transfer and discharge and notice of bed-hold were provided. Determine the basis for discharge and how the facility evaluated the resident. The surveyor may have to obtain hospital records for further investigation. Review any other documentation necessary to ascertain the extent to which the facility made efforts to enable the resident to return.

In cases where a facility did not allow a resident to return due to lack of an available bed, the surveyor should review facility admissions beginning with when the resident was ready to return to determine *whether the facility held the resident's bed in accordance with its bed-hold policies, or, if the resident's stay outside of the facility exceeded the bed-hold period, whether there was an available bed at the time the resident sought return to the facility. If there was not an available bed at the time the resident sought return to the facility, the surveyor should determine whether or not the resident was allowed to return to the first available bed in a semi-private room.*

When a facility alleges they cannot meet the resident's needs and does not allow a resident to return, the surveyor should 1) investigate why the resident's needs cannot be met; and 2) review facility admissions to determine if residents with similar care needs have been admitted or permitted to remain, which could indicate the facility has the capability to meet the needs of the resident who is not being allowed to return and demonstrates noncompliance with this requirement.

KEY ELEMENTS OF NONCOMPLIANCE to cite deficient practice at F626, the surveyor's investigation will generally show that the facility failed to:

- Establish and/or implement a policy that is in accordance with the State Medicaid plan, and addresses returning to the facility following hospitalization or therapeutic leave; or
- Ensure that residents whose hospitalization or therapeutic leave exceeds the State's bed-hold period are returned to their previous room and/or the first available bed in a semi-private room; or
- Permit a resident to return to the same composite distinct part in which they previously resided.

DEFICIENCY CATEGORIZATION

In addition to actual or potential physical harm, always consider whether psychosocial harm has occurred when determining severity level (See Psychosocial Outcome Severity Guide).

Examples of Severity Level 4 Non-compliance: Immediate Jeopardy to Resident Health or Safety include, but are not limited to:

Facility failed to allow a resident to return following therapeutic leave to a family member's home, resulting in the resident being found living on the street, without

adequate food *and* shelter, and susceptible to serious accidents.

Examples of Severity Level 3 Noncompliance: Actual Harm that is not Immediate Jeopardy include, but are not limited to:

- Facility failed to allow a resident to return to *an available* bed in the same location of the composite distinct part *in* which they resided previously. The new location was *not on the same campus where the resident previously resided, and was farther* from the resident's family, resulting in the resident expressing sustained and persistent sadness and withdrawal.
- *After transfer to a behavioral health hospital, a facility failed to allow a resident to return to the facility where the resident had lived for several months. The facility then refused to allow the resident to return to the facility when the hospitalization ended, resulting in the resident being transferred from the hospital to a different nursing home 40 minutes away, where he did not know anyone, and where he developed increased anxiety and depression.*

An example of Severity Level 2 Noncompliance: No Actual Harm with Potential for More Than Minimal Harm that is Not Immediate Jeopardy includes, but is not limited to:

- Facility failed to allow a resident to return to his/her previous room (even though it was available) upon return from the hospital, which resulted in no more than minimal harm as the resident adjusted to the new room. This noncompliance has the potential to cause more than minimal psychosocial harm.

An example of Severity Level 1 noncompliance: No actual harm with potential for minimal harm includes, but is not limited to:

A facility which is a composite distinct part permitted a resident to return following hospitalization or therapeutic leave, however, the resident returned to a different location in the composite distinct part even though a bed was available in the same location where the resident had resided prior to transfer. The resident did not express displeasure with the situation.