

## **F623**

*(Rev. 208; Issued:10-21-22; Effective: 10-21-22; Implementation:10-24-22)*

### **§483.15(c)(3) Notice before transfer.**

**Before a facility transfers or discharges a resident, the facility must—**

- (i) Notify the resident and the resident’s representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.**
- (ii) Record the reasons for the transfer or discharge in the resident’s medical record in accordance with paragraph (c)(2) of this section; and**
- (iii) Include in the notice the items described in paragraph (c)(5) of this section.**

### **§483.15(c)(4) Timing of the notice.**

- (i) Except as specified in paragraphs (c)(4)(ii) and (c)(8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.**
- (ii) Notice must be made as soon as practicable before transfer or discharge when—**
  - (A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;**
  - (B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;**
  - (C) The resident’s health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;**
  - (D) An immediate transfer or discharge is required by the resident’s urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or**
  - (E) A resident has not resided in the facility for 30 days.**

**§483.15(c)(5) Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the following:**

- (i) The reason for transfer or discharge;**
- (ii) The effective date of transfer or discharge;**
- (iii) The location to which the resident is transferred or discharged;**
- (iv) A statement of the resident’s appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;**
- (v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;**
- (vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and**
- (vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.**

**§483.15(c)(6) Changes to the notice.**

**If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.**

**§483.15(c)(8) Notice in advance of facility closure**

**In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.70(l).**

**DEFINITIONS**

**“Facility-initiated transfer or discharge”:**A transfer or discharge which the resident objects to, did not originate through a resident’s verbal or written request, and/or is not in alignment with the resident’s stated goals for care and preferences.

**“Resident-initiated transfer or discharge”:**Means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility (leaving the facility does not include the general expression of a desire to return home or the elopement of residents with cognitive impairment).

**“Transfer and Discharge”:**Includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility. *(See §483.5)* Specifically, transfer refers to the movement of a resident from a bed in one certified facility to a bed in another certified facility when the resident expects to return to the original facility. Discharge refers to the movement of a resident from a bed in one certified facility to a bed in another certified facility or other location in the community, when return to the original facility is not expected.

**GUIDANCE**

The requirements at §§483.15(c)(3)-(6) only apply to facility-initiated transfers and discharges, not resident-initiated transfers and discharges. This guidance will address the requirement to send a notice in situations where the facility initiates a transfer or discharge, including discharges that occur while the resident remains in the hospital after emergency transfer.

Facility-initiated transfers and discharges generally occur when the facility determines it should not, or cannot provide needed care or services to a resident in accordance with F622, Transfer and Discharge Requirements. Whether or not a resident agrees with the facility’s decision, the requirements at §483.15(c)(3)-(6) apply whenever a facility initiates the transfer or discharge.

A resident-initiated transfer or discharge is one in which the resident has provided written or verbal notice of their intent to leave the facility, which is documented in the resident’s record. A resident’s expression of a general desire to return home or to the community or elopement of a resident who is cognitively impaired should not be taken as a notice of intent to leave. When a resident initiates his or her transfer or discharge, the medical record should contain documentation or evidence of the resident’s or resident representative’s verbal or written

notice of intent to leave the facility, a discharge care plan, and documented discussions with the resident or if appropriate his/her representative, containing details of discharge planning, and arrangements for post- discharge care (See F660, Discharge Planning Process). Additionally, the comprehensive care plan should contain the resident's goals for admission and desired outcomes, which should be in alignment with the discharge if it is resident initiated.

Therapeutic leave is a type of resident-initiated transfer (*See F625 for additional guidance on therapeutic leave*). However, if the facility makes a determination to not allow the resident to return, the transfer becomes a facility-initiated discharge.

**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.*

#### **Notice of Transfer or Discharge and Ombudsman Notification**

For facility-initiated transfers or discharges of a resident, *prior to the transfer or discharge*, the facility must notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. Additionally, the facility must send a copy of the notice of transfer or discharge to the representative of the Office of the State Long-Term Care (LTC) Ombudsman. The intent of sending copies of the notice to a representative of the Office of the State LTC Ombudsman is to provide added protection to residents from being inappropriately *transferred or discharged*, provide residents with access to an advocate who can inform them of their options and rights, and to ensure that the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges. The *facility must maintain* evidence that the notice was sent to the Ombudsman. While Ombudsman Programs vary from state to state, facilities *should* know the process for ombudsman notification in their state.

#### **Facility-Initiated Transfers and Discharges**

In situations where the facility has decided to discharge the resident while the resident is still hospitalized, the facility must send a notice of discharge to the resident and resident representative *before the discharge*, and must also send a copy of the discharge notice to a representative of the Office of the State LTC Ombudsman. Notice to the Office of the State LTC Ombudsman must occur at the same time the notice of discharge is provided to the resident and resident representative, even though, at the time of initial emergency transfer, sending a copy of the **transfer** notice to the ombudsman only needed to occur as soon as practicable as described below.

For any other types of facility-initiated *discharges*, the facility must provide notice of discharge to the resident and resident representative along with a copy of the notice to the Office of the State LTC Ombudsman at least 30 days prior to the discharge or as soon as possible. The copy of the notice to the ombudsman must be sent at the same time notice is provided to the resident and resident representative.

**Emergency Transfers**--When a resident is temporarily transferred on an emergency basis to an acute care facility, this type of transfer is considered to be a facility-initiated transfer and a notice of transfer must be provided to the resident and resident representative as soon as

practicable *before the transfer*, according to 42 CFR §483.15(c)(4)(ii)(D). Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis, *as long as the list meets all requirements for content of such notices at §483.15(c)(5)*.

### **Resident-Initiated Transfers and Discharges**

A resident-initiated transfer or discharge means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility. The medical record must contain documentation or evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility. While a resident's expression of a general desire or goal to return home or to the community or the elopement of a resident who is cognitively impaired should be taken into consideration for the purposes of discharge planning and community placement, it should not be taken as notice of intent to leave the facility and does not constitute a resident-initiated transfer or discharge. For resident-initiated transfers or discharges, sending a copy of the notice to the ombudsman is not required because the notice requirement does not apply to resident-initiated transfers or discharges.

Surveyors must determine whether a transfer or discharge is resident or facility-initiated. The medical record should contain documentation or evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility, a discharge care plan, and documented discussions with the resident or, if appropriate, his/her representative, containing details of discharge planning and arrangements for post-discharge care (See F660, Discharge Planning Process, and F661, Discharge Summary). Additionally, the comprehensive care plan should contain the resident's goals for admission and desired outcomes, which should be in alignment with the discharge if it is resident-initiated. If a surveyor has concerns about whether a resident-initiated transfer or discharge was actually a facility-initiated transfer or discharge, the surveyor should investigate further through interviews and record review.

### **Contents of the Notice**

The facility's notice must include *all of the following at the time notice is provided*:

- The specific reason for the transfer or discharge, including the basis *under* §§483.15(c)(1)(i)(A)-(F);
- The effective date of the transfer or discharge;
- The *specific* location (*such as the name of the new provider or description and/or address if the location is a residence*) to which the resident is to be transferred or discharged;
- An explanation of the right to appeal *the transfer or discharge* to the State;
- The name, address (mail and email), and telephone number of the State entity which receives *such* appeal hearing requests;
- Information on how to *obtain* an appeal *form*;
- Information on obtaining assistance in completing and submitting the appeal hearing request; and
- The name, address (*mailing and email*), and phone number of the representative of the Office of the State Long-Term Care ombudsman.

For *nursing facility* residents with intellectual and developmental disabilities (*or related disabilities*) or with mental illness (*or related disabilities*), the notice must include the name, mailing and e-mail addresses and phone number of the state agency responsible for *the protection and advocacy* for these populations.

### **Timing of the Notice**

Generally, this notice must be provided at least 30 days prior to the transfer or discharge *of the resident*. Exceptions to the 30-day requirement apply when the transfer or discharge is affected because:

- *The health and/or safety of individuals in the facility would be endangered due to the clinical or behavioral status of the resident;*
- *The resident's health improves sufficiently to allow a more immediate transfer or discharge;*
- *An immediate transfer or discharge is required by the resident's urgent medical needs;*  
*or*
- *A resident has not resided in the facility for 30 days.*

In these *exceptional* cases, the notice must be provided to the resident, resident's representative if appropriate, and LTC ombudsman as soon as practicable *before the transfer or discharge*.

### **Changes to the Notice**

If information in the notice changes, the facility must update the recipients of the notice as soon as practicable with the new information to ensure that residents and their representatives are aware of and can respond appropriately. For significant changes, such as a change in the *transfer or discharge* destination, a new notice must be given that clearly describes the change(s) and resets the transfer or discharge date in order to provide 30 day advance notification *and permit adequate time for discharge planning*. *Surveyors should be aware that if a change in destination indicates that the original basis for discharge has changed, a new notice is required and additional appeal rights may exist for the resident. This situation may require further investigation to determine whether the facility is in compliance with the Transfer and Discharge requirements at 42 CFR 483.15(c).*

*Example: A facility determines it cannot meet a resident's needs and arranges for discharge to another nursing home which can meet the resident's needs. Before the discharge occurs, the receiving facility declines to take the resident and the discharging facility changes the destination to a setting that does not appear to meet the resident's ongoing medical needs. This could indicate that the basis for discharge has changed, and would require further investigation.*

**NOTE:** *Federal regulations at 42 CFR Part 431, Subpart E, Fair Hearings for Applicants and Beneficiaries, address the requirements for States to implement a fair hearing process.*

### **Notice in Advance of Facility Closure:**

Refer to §483.70(l), F845 for guidance related to evaluating Notice in Advance of Facility Closure.