**Rule No. 560-X-10-.26 Transfer and Discharge Rights**

(1) Definitions.

(a) Discharge means movement from an entity that participates in Medicare as a skilled nursing facility (SNF), a Medicare certified distinct part, an entity that participates in Medicaid as a nursing facility (NF), or a Medicaid certified distinct part to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

(b) Resident means a resident of a SNF or NF or any legal representative of the resident.

(c) Transfer means movement from an entity that participates in Medicare as a SNF, a Medicare certified distinct part, an entity that participates in Medicaid as a NF or a Medicaid certified distinct part to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility. A transfer is not the movement from one certified bed in the facility to another certified bed in the same facility.

(2) Transfer and Discharge Requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

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

(b) 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;

(c) The safety of individuals in the facility is endangered due to the clinical behavioral status of the resident;

(d) The health of individuals in the facility would otherwise be endangered;

(e) 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. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party (including Medicare or Medicaid) denies the claim and the resident refuses to pay for the stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(f) The facility ceases to operate.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified above, the resident's clinical record must be documented. The documentation must be made by:

(a) The resident's physician when transfer or discharge is necessary under paragraph (2)(a) or (2)(b) of this rule; and

(b) A physician when transfer or discharge is necessary under paragraph (2)(d) of this rule.

(4) Notice Before Transfer. Before a facility transfers or discharges a resident, the facility must:

(a) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move. The facility must send a copy of the notice to a representative of the Office of the State Long Term Care Ombudsman and the Alabama Medicaid Agency;

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

(c) Include in the notice the items described in paragraph (6) of this rule. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the resident as soon as practicable.

(5) Timing of the Notice.

(a) Except when specified in paragraph (5)(b) of this rule, the notice of transfer or discharge required under this rule must be made by the facility at least 30 days before the resident is transferred or discharged.

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

1. The safety of individuals in the facility would be endangered under paragraph (2)(c);

2. The health of individuals in the facility would be endangered under paragraph (2)(d);

3. The resident's health improves sufficiently to allow a more immediate transfer or discharge under paragraph (2)(b);

4. An immediate transfer or discharge is required by the resident's urgent medical needs under paragraph (2)(a); or

5. A resident has not resided in the facility for 30 days.

(c) In the case of the facility closure under paragraph (2)(f), the facility administrator must provide written notice at least 60 days prior to the impending closure to the Department of Public Health, the Office of the State Long Term Care Ombudsman, residents of the facility, and residents' representatives, as well as the plan for the transfer and adequate relocation of the residents to the most appropriate facilities.

(6) Contents of the Notice. For nursing facilities, the written notice specified in paragraph (4) of this rule must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged.

(d) The name, mailing address, e-mail address, and telephone number of the Alabama Medicaid Agency and a statement that the resident has the right to appeal the action to the Medicaid Agency by filing a written request within 30 days of the notice of transfer or discharge;

(e) The name, mailing address, e-mail address, and telephone number of the State ~~long~~Long ~~term~~ Term ~~care~~ Care ~~ombudsman~~Ombudsman;

(f) For nursing facility residents with intellectual and developmental disabilities or related conditions, the mailing address, e-mail address, and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(g) For nursing facility residents ~~who are mentally ill,~~with a mental disorder or related condition, the mailing address, e-mail address, and telephone number of the agency responsible for the protection and advocacy of ~~mentally ill~~ individuals with mental disorders established under the Protection and Advocacy for Mentally Ill Individuals Act.

(h) All involuntary transfer and discharge notices must be sent to the State Long Term Care Ombudsman and the Alabama Medicaid Agency.

(7) Orientation for Transfer or Discharge.

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

(b) The resident's clinical record must be documented when the facility transfers or discharges a resident. The documentation should include a statement from the resident's physician indicating that the resident may be transferred or discharged including the level of care required for the resident.

(8) Appeal of Transfer or Discharge.

(a) A resident who is aggrieved by a facility's decision to transfer or discharge the resident may request a review of the decision by the Medicaid Agency. Such request must be in writing and received within 30 days of the date of the notice of transfer or discharge.

(b) Upon receipt of a request for review, Medicaid will promptly notify the facility and the resident of the procedures to be followed. Once the resident has requested a review of the discharge, the nursing facility must allow the resident to remain in the facility until all administrative appeals have been exhausted unless there is documented verifiable evidence in the resident's medical record indicating that the facility can no longer meet the resident's needs or he is a danger to the health and safety of other resident's in the facility and an appropriate placement for the resident has been located. Both parties will be allowed 10 days to submit any documentary information regarding the proposed transfer or discharge. If deemed desirable, Medicaid may contact one or both parties to obtain additional information, either written or oral. Properly qualified personnel will be utilized in the review process, and all decisions involving medical issues will be made by a Medicaid physician.

(c) Both parties will be notified by certified mail of the review decision. An aggrieved party may request a fair hearing by filing a written request with Medicaid within 30 days of the date of the review decision letter. Except as otherwise provided herein, hearings will be conducted in accordance with Chapter 3 of this Administrative Code. The hearing will be a de novo proceeding to review the decision to transfer or discharge. Both the facility and the resident will be notified of the hearing date and will be entitled to participate. The hearing decision will be binding on all parties, regardless of whether a party participates in the fair hearing.

(9) 24 hour hospital stay. Resident's of nursing facilities who go to a hospital to receive outpatient services, i.e. emergency room observation, etc., do not have to be discharged from the nursing facility unless the resident is retained longer than 24 hours. After 24 hours discharge by the nursing facility is necessary. Residents who go to a hospital to receive inpatient service must be discharged. If an inpatient claim suspends as a duplicate of a nursing facility claim, the inpatient claim shall be paid and the other claim shall be denied or recouped unless the "from" and "to" dates on the hospital claim are the same. It is the nursing facilities responsibility to monitor the status of residents in hospitals to assure that discharge and readmissions to the nursing facility are properly reported.

**Author:** Robin Arrington, Administrator, LTC Provider/Recipient Services Unit.
**Statutory Authority:** State Plan Attachment 4.35-B; Title XIX, Social Security Act, Sections 1819 and 1919; 42 CFR 431.200 et seq., and 483.200 et seq. **History:** Rule effective January 8, 1985. Emergency rule effective October 1, 1990. Amended February 13, 1991, and August 12, 1993. **Amended:** Filed June 20, 2003; effective September 15, 2003. **Amended:** Filed March 20, 2008; effective June 18, 2008. **Amended**: Filed June 20, 2017.