

New Year, New Guidance: Virginia Office of Licensure and Certification Releases New Guidance on Transfer and Discharge Requirements for Long Term Care Facilities

The Virginia OLC has released a guidance document entitled “Resident Transfer or Discharge” effective December 2012, which clarifies nursing facility responsibilities when transferring and discharging residents. (available at <http://www.vdh.state.va.us/OLC/Laws/documents/2012/pdf/Resident%20Transfer%20or%20Discharge%20final.pdf>). Much of the document lays out the familiar steps needed to meet the notice requirements for transfers and discharges of nursing facility residents, but at least two provisions are of particular note.

Facility Notice to “Ombudsman Program”

The guidance document requires for the first time that “[b]efore a facility transfers/discharges a resident, the facility must notify... the Ombudsman program of the move.” Federal regulations require only that the resident be provided with the State Long Term Care Ombudsman’s name, address, and phone number, presumably so the resident may contact him or her if necessary. The guidance places the burden on the facility to affirmatively contact the “Ombudsman program”. Furthermore, the “Ombudsman program” is not defined to mean either the local or State Long Term Care Ombudsman. While facility notice provided to either or both

Ombudsman should suffice, notice to residents should continue to include contact information for the State Long Term Care Ombudsman.

Procedures for Discharge for Nonpayment

The guidance document also requires that prior to transferring or discharging a resident for nonpayment, the resident must be given three separate, written notices of nonpayment. These written notices of nonpayment must be given at least 15 days apart. This requirement attempts to define “reasonable and appropriate notice” as required under the federal regulations covering transfer and discharge for nonpayment. Regarding discharge for nonpayment, the guidance also requires that a facility maintain “separate procedures” for collection for nonpayment. The procedures should include provisions for providing the three notices discussed above, discharge planning, and allowing the resident to back-pay up to the date of the transfer or discharge, and then remain in the facility.

Other Key Provisions

- The guidance document defines transfers to include transfers

from one distinct part unit to another within a facility, but does not include transfers to a different bed if in the same distinct part unit.

- The transfer or discharge notice to the resident, the resident’s legal representative, and to the Ombudsman should list the six (6) allowed reasons for transfer or discharge, and the specific reason for the action taken.
- Notice of the facility “Bed Hold” policy should be given to residents anytime it is updated, in addition to being given at the time of admission and with any notice of transfer.
- The facility should implement a written plan to “assure the orderly and safe transfer/discharge of a resident.”
- The guidance document clarifies the timing of notices for involuntary transfers or discharges. Except in cases where the resident needs “immediate” emergency hospitalization, notice must be given at least 5 days in advance of the transfer or discharge.
- The guidance document differentiates between emergency medical care and urgent medical care for the 5 days’ notice requirement. Where a resident needs emergency hospitalization, 5 days’ notice of transfer is not required, but 5 days’ notice is apparently required when the

transfer is to meet the resident's urgent medical needs.

- 30 day notice is required when the facility can no longer meet the resident's medical needs, upon nonpayment, when the resident consents, or the facility ceases operation.
- An involuntary transfer or discharge should be discussed with the resident or the resident's legal representative. The discussion and the names of the people present for that discussion should be documented in the resident's medical record.

- The facility must also provide the receiving facility with written documentation of the reasons or causes for the transfer or discharge.

Practical Next Steps

- Create checklists for transfer and discharge.
- Review Policies and Discharge Notice templates and revise as necessary.
- Cultivate relationships with local Ombudsman.

As always, the attorneys at Hancock, Daniel, Johnson & Nagle are available to clarify points outlined in the OLC guidance document or to assist in any other matters that arise in the long term care setting. If you have any questions about how these updates may impact you, contact Mary Malone at mmalone@hdjn.com, Jeannie Adams at jadams@hdjn.com, Emily Towey at etowey@hdjn.com, or Berkeley Home at bhome@hdjn.com. For telephone inquiries, please call Mary, Jeannie, Emily, or Berkeley at 804-967-9604.

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