

December 3, 2020

Dear Long-Term Care Facilities,

This letter is to review resident rights to bed holds and discharges. The Long-Term Care Ombudsman Program (LTCOP) has received troubling reports of facilities refusing to allow residents to return after a hospital stay, or brief visit home. Please review the information below to ensure that you understand your obligations and share with family members or power of attorney before discharge or bed hold begins.

1. You must notify residents or their representatives of your bed hold policy.

This must be done at the time a resident is admitted, **and before** a resident's therapeutic leave (brief visit home), or transfer to the hospital. 7.9.2.22 (E)(1)(e) NMAC; 42 CFR 483.15. Federal law requires the notice to include: the duration of the state bed-hold policy, the facility's policy on permitting residents to return to the facility after they are hospitalized or take therapeutic leave. 42 CFR 483.15. New Mexico guidance on reserve bed days can be found at 8.312.2 NMAC. Veterans are entitled to additional bed hold days. 38 CFR 51.40.

2. You must reserve a resident's bed and readmit that resident who is on leave (a brief home visit), or temporarily discharged (e.g. a hospital stay) and who has expressed an intention to return.

These residents shall not be denied readmission if their level of care remains the same. 7.9.2.40 NMAC. Facilities must hold a resident's bed until the resident returns, waives his or her right to have the bed held or until the maximum time allowable as defined the facility policy expires. *Id.*

If a Medicare or Medicaid resident's hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, but that resident still requires the facility's services, federal law requires that the facility allow that person to return to their previous room if available or immediately upon the availability of a bed in a semi-private room. 42 CFR 483.15.

- This is a broad right that is not dependent on the length of the bed hold and applies to every resident who is eligible for Medicaid or Medicare reimbursement when returning from the hospital.
- This also applies when a Medicaid or Medicare resident or their representative has elected not to pay for additional bed hold days beyond those covered in the State regulations.

Facilities must not treat situations where a resident goes on therapeutic leave and returns later than agreed upon, as a resident-initiated discharge. *See CMS State Operations Manual, Appendix PP.* The facility must not initiate a discharge unless it has

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ascertained from the resident or resident representative that the resident does not wish to return. *Id.*

3. After a hospital stay, if the hospital and the physician have approved transfer back to the nursing facility, you cannot refuse to readmit the resident based on level of care.

Facilities must not evaluate the resident based on his or her condition when originally transferred to the hospital. *See CMS State Operations Manual, Appendix PP.* If a facility is concerned about permitting the resident to return, based on level of care, the following must occur:

- The facility must determine if the resident still requires the services of the facility and is eligible for Medicare skilled nursing facility or Medicaid nursing facility services. *Id.*
- Communicate with the hospital to obtain an accurate status of the resident's **current condition**. *Id.*
- Determine what treatments, medications and services the hospital provided to improve the resident's condition. Determine if the facility is able to provide the same treatments, medications, and services. *Id.*
- Work with the hospital to ensure the resident's condition and needs are within the nursing home's scope of care. *Id.* For example, **the nursing home could ask the hospital to:**
 - o 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;
 - o Convert IV medications to oral medications and ensure that the oral medications adequately address the resident's needs. *Id.*

4. If you refuse to allow the return of a resident, you must comply with transfer and discharge requirements, and inform the resident of their right to an appeal.

You must notify the resident, his or her representative, and the LTCOP in writing of the discharge, including notification of appeal rights. 42 CFR 483.15 (c)(3)(i). 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 evidence that the resident's return would endanger the health or safety of the resident or other individuals in the facility. *See CMS State Operations Manual, Appendix PP.*

A resident's hospital stay or brief visit home is not a means to involuntarily discharge a resident. If you have questions about the contents of this letter, please feel free to contact our program through your regional coordinator or our office. Thank you for your cooperation and support on this matter.

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Interim-State Ombudsman