



Updated: 6/12/2018 to include notification to the LTCO Program for “emergency transfers”.

## **FACT SHEET:** Notifying the Washington State LTC Ombuds of Facility-Initiated Discharges and Transfers

The Questions & Answers below are designed to alert nursing facilities to the legal obligation, effective November 28, 2016, to provide a copy of all facility-initiated discharge and transfer notices to the State LTC Ombuds.

### **Q1: When a facility initiates a discharge or transfer of a resident, who must the facility notify in writing?**

A1: Pursuant to [42 CFR 483.15\(c\)\(3\)](#), nursing facilities that initiate a discharge or transfer of a resident must provide a copy of the discharge or transfer notice to all of the following:

- The resident;
- The resident’s representative(s), **and** The State LTC Ombuds.

### **Q2: How should a copy of the notice be sent to the State LTC Ombuds?**

A2: Send a copy of each notice by email to [LTCOP@mschelps.org](mailto:LTCOP@mschelps.org), or by fax to (253) 815-8173. For your convenience, post cards with contact information for the State LTC Ombuds are enclosed and are available at [www.waombudsman.org](http://www.waombudsman.org). Notices by post mail will not be accepted.

### **Q3: After receiving notice of a facility-initiated discharge or transfer, what will the State Ombuds do?**

A3: The State Office will record the receipt of the notice and forward it to the appropriate Regional LTC Ombudsman Office. However, facilities should not expect that providing notice to the State LTC Ombuds will result in Ombuds advocacy on behalf of the Resident. Residents and others who want assistance from a LTC Ombuds (in discharges and any other areas) should continue to use the regular channels to contact their local Ombuds office. See [www.waombudsman.org](http://www.waombudsman.org) for contact information for a local LTC Ombudsman Program.

### **Q4: What is a “facility-initiated” discharge or transfer?**

A4: The Centers for Medicare and Medicaid Services designates a facility-initiated transfer or discharge as “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.” (Memo, 2/1/2018, ALISA: NH #2018-001 S&C 18-08-NH: an initiative to address facility-initiated Discharges that violate federal regulations)

Thank you for taking the time to read this guidance fact sheet. You should consult your legal counsel if you have questions of a legal nature or have questions about the content of this fact sheet. Revised 6/12/2018.

**Q5: What information must be included in the notice of facility-initiated discharge or transfer?**

A5: The notice requirements for transfer/discharge of a resident from a nursing facility must contain:

- The reason for transfer or discharge;
- The effective date of transfer or discharge;
- The location to which the resident will be transferred or discharged;
- A statement of the resident’s appeal rights, including contact information for the appeal agency, information on how to obtain an appeal form, and assistance in completing the form and submitting the appeal hearing request;
- Contact information for the Washington State Long-Term Care Ombudsman Program; and
- Contact Information for Disability Rights Washington 315 5<sup>th</sup> Avenue South, Suite 850, Seattle, WA 98104, Voice 206.324.1521 or 1.800.562.2702, Fax 206.957.0729, Email [Info@dr-wa.org](mailto:Info@dr-wa.org).

**Q6: Is it adequate notice to send a copy of the DSHS Form #10-237?**

A6: Yes, it must be an exact copy of the written notice provided to the resident and the resident representative(s). However, please note that providing a copy of DSHS Form # 10-237 to the State LTC Ombuds fulfills *only* the requirement to notify the State Ombuds of a facility-initiated discharge or transfer. Receipt of such a form by the State Ombuds does not constitute waiver of any resident rights, nor does it constitute an admission by the State Ombuds that the notice meets other legal notice requirements.

**Q7: As an alternative to DSHS form # 10-237, is it enough to send the State LTC Ombuds a copy of a notice drafted by the nursing facility?**

A7: Yes, as long as it is an exact copy of the notice provided to the resident and the resident’s representative(s). However, please note that providing a copy of the notice to the State LTC Ombuds fulfills only the requirement to notify the State Ombuds of a facility-initiated discharge or transfer. Receipt of such notice by the State Ombuds does not constitute waiver of any resident rights, nor does it constitute an admission by the State Ombuds that the notice meets other legal notice requirements.

**Q8: Is it enough to send the State LTC Ombuds a list of discharges and transfers?**

A8: No. Nursing facilities that initiate a discharge or transfer of a resident must provide the State LTC Ombuds an exact copy of each discharge or transfer notice that is sent to each resident and resident representative(s). \*If the resident is transferred under “emergency” circumstances to an acute care setting (Emergency Department or Hospital) the facility must notify the State LTCOP as soon as practicable. **SEE Q12 Below.**

**Q9: Is it enough to give a copy of the notice to my local ombudsman?**

A9: No. The notice must be promptly sent to the State LTC Ombuds.

**Q10: What if the information in the notice changes prior to effecting the transfer or discharge?**

A10: The facility must send an updated notice to each recipient (the resident, the resident representative(s), and the State LTC Ombuds) as soon as practicable once the updated information becomes available.

**Q11: What if the resident is a Medicaid and Medicaid-Pending beneficiary?**

A11: If the resident is receiving Medicaid, you must contact the local HCS office.

**Q12: Is notice to the State Ombuds still required when a facility initiates a discharge or transfer of a resident who has already left the facility (for example, the resident is in the hospital or out on therapeutic leave)?**

A12: In such situations, the facility is still required to send a written discharge notice to each recipient (the resident, the resident representative(s), and the State LTC Ombuds).

**UPDATE** \*If the resident is transferred to a hospital for an emergency, 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. (Example of list form is enclosed)

**Q13: What other legal requirements apply to notices of transfer and discharge?**

A13: Facilities must continue to fulfill all other legal obligations related to discharge and transfer, including but not limited to attempting to avoid the discharge or transfer using reasonable accommodations, informing residents of their right to appeal, and providing sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge. For additional guidance, please contact Residential Care Services at the Department of Social and Health Services, your member association office, or your legal counsel.