IN VOLUNTARY TRANSFER AND DISCHARGE NOTICE
CHECKLIST

This information is provided as a Residents Rights service by the Nebraska Long-Term Care Ombudsman Program and is based on information provided by the Nebraska Department of Health and Human Services.

Federal and state statutes and regulations mandate that a written notice of involuntary transfer or discharge from a nursing facility meet certain requirements. In the event there is a difference between what is specified in the federal statutes/regulations and what is specified in the state statutes/regulations, then the facility should follow both - meaning follow the more stringent rule. (e.g. In the case of an involuntary discharge issued for non-payment, the federal regulations state that 30-days notice must be given, however Nebraska’s regulations state only 10-days notice must be given. Therefore, to encompass both, the facility must give 30-days notice).

A notice of involuntary transfer/discharge should contain:

- **The reason for transfer or discharge.** The reason given should be one allowed by federal or state statute, should be documented in the resident's file and, if for medical reasons, documented by resident’s physician.

- **The effective date of the transfer or discharge.** In most cases, 30 days notice is required, so the effective date of discharge should be 30 days from the date the notice is actually sent or presented.

- **Where the resident will be transferred or discharged.** The location to which the resident is to be transferred or discharged. The place and care to be provided at the facility should be appropriate for the level of care needed by the resident.

- **A copy of the following statement (in not less than 12-point type) is required by state statute:**

  “A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service, the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.”

  This provision is intended to notify residents and their legal representatives that they have the right to file a complaint with the Department of Health and Human Services, or to take other action as applicable, if they feel the resident is being discriminated or retaliated against.
Statement that the resident has the right to appeal the decision to transfer or discharge. The appeal should be in writing and sent to:

DHHS - Legal Services Hearing Officer Section  
P.O. Box 95026  
Lincoln, NE 68509-5026

If you have questions about your appeal or need more information about how to file an appeal, you can call 402-471-7237.

Statement that the resident has the right to contact:

State Long-Term Care Ombudsman  
P.O. Box 95026  
Lincoln, NE 68509  
402-471-9345 (Lincoln area) or 800-942-7830 (Nebraska).

The State Long-Term Care Ombudsman program is designed to advocate for residents in long-term care facilities.

IF THE RESIDENT IS DEVELOPMENTALLY DISABLED OR MENTALLY ILL:

A statement that the resident has the right to contact:

Disability Rights Nebraska  
134 South 13th Street, Suite 600  
Lincoln, NE 68508  
402-474-3183  
800-422-6691
The following regulations are found at 42 Code of Federal Regulations (CFR), Part 483.

Section 483.15 Admission, transfer and discharge rights.

(c) Transfer and discharge –

Definition. 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.

(1) Transfer and discharge facility requirements. (i) 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 or 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. 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.

(2) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(ii) The documentation must be made by –

(A) The resident’s physician when transfer or discharge is necessary under paragraph (c)(a)(A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (b)(1)(i)(C) or (D) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility must -

(i) Notify the resident and, 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 the State Long-Term Care Ombudsman;

(ii) Record the reasons in the resident’s medical record; and

(iii) Include in the notice the items described in paragraph (b)(5) of this section.

(4) Timing of the notice. (i) Except where specified in paragraph (b)(4)(ii) and (b)(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 (b)(1)(i)(C) of this section;
(B) the health of individuals in the facility would be endangered, under paragraph (b)(1)(ii)(D) of this section;  
(C) the resident’s health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (b)(1)(ii)(B) of this section;  
(D) an immediate transfer or discharge is required by the resident’s urgent medical needs, under paragraph (b)(1)(ii)(A) of this section; or  
(E) a resident has not resided in the facility for 30 days.

(5) Contents of the notice. The written notice specified in paragraph (b)(3) of this section must include the following:  
(i) The reason for the 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 that the resident has the right to appeal the action to the State;  
(v) The name, address, and telephone number of the State Long-Term Care Ombudsman;  
(vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number or 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  
(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

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

The following regulations are found at **Title 175, Chapter 12, State of Nebraska Regulations Governing Licensure of Skilled Nursing Facilities, Nursing Facilities, Intermediate Care Facilities (Revised 01/03/05)**.

**Section 006.05 Resident Rights**: The facility must inform residents of their rights in writing. The operations of the facility must afford residents the opportunity to exercise their rights, which must include, but are not limited to, the following. Residents must have the right to:

5. Be free from arbitrary transfer or discharge. The resident must be informed at the time of admission that he or she may be transferred or discharged only upon the following terms:  
   a. Upon his or her consent;  
   b. For medical reasons, which must be based on the resident’s needs and be determined and documented by a physician;  
   c. For the resident’s safety or the safety of other residents or facility employees;  
   d. When rehabilitation is such that movement to a less restrictive setting is possible; or  
   e. For nonpayment of the resident’s stay, except as prohibited by Title XVIII or XIX of the Social Security Act, as amended, or the Nebraska Nursing Home Act, Neb. Rev. Stat. Sections 71-6008 to 71-6037. Non-payment under the Nebraska Nursing Home Act shall not include a change in resident
economic status so that the resident receives Medicaid or becomes eligible for Medicaid if the resident has resided in the facility for a period of at least one year after July 17, 1986, unless ten percent (10%) of the facility’s residents are receiving Medicaid or are eligible for Medicaid. This provision does not apply to Nebraska Veterans’ Homes established under Chapter 80, Article 3 of Nebraska Statutes.

A minimum of 30 days written notice must be given to the resident or to his or her designee prior to involuntary transfer or discharge of a resident, except that:

(1) Five days written notice must be given if the transfer is to a less restrictive setting due to rehabilitation.
(2) Ten days written notice will be given if the resident is five or more days in arrears of payment for stay.
(3) Written notice is not required in the event of an emergency transfer or discharge if the transfer or discharge is mandated by the resident’s health care needs and is in accord with the written orders and medical justification of the attending physician, or if mandated for the safety of other residents or facility employees as is documented in the facility records.

Written notice must contain:

(1) The stated reason for the transfer or discharge: and
(2) The effective date of the transfer or discharge.
(3) In not less than 12-point type, the following text:

“A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service, the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.”