

Testimony
Long Term Care Ombudsman Report Regarding
Notification Requirements for Basic Care and
Nursing Facilities
November 7, 2007

Senator Dever and members of the Long-Term Care Committee, I am Helen Funk, State Long Term Care Ombudsman at the Aging Services Division, Department of Human Services.

The requirements that a nursing facility, hospital based distinct part nursing facility or swing bed need to follow are in Federal Regulations for Long Term Care 42 CFR & 483.12 Admission, transfer and discharge rights (F200A through F2131).

Requirements mandated by the ND Department of Human Services in North Dakota, and Licensing Rules for Long Term Care. Administrative Code, Chapter 75-01-03, include regulations for giving of notice, explanation of right to fair hearing, notice of facility's intention to transfer or discharge a resident and facility responsibility prior to a fair hearing concerning transfer or discharge.

A written notice for transfer or discharge for nursing facilities and swing beds in a hospital with less than fifty beds must include:

- The reason for transfer or discharge.
- The effective date of transfer or discharge.

- The location to which the resident is transferred or discharged.
- A statement that the resident has the right to appeal the action to the State.
- A statement that the resident has the right to appeal the action to the State.
- The name, address, and telephone number of the State LTC Ombudsman.
- The name, address, and telephone number of Protection and Advocacy is provided for residents with a diagnosis of developmental disabilities or for residents who are diagnosed with mental illness.
- A notice of transfer and discharge must be made by the facility at least 30 days prior to a move occurring.

An exception to the 30-day notice is: A notice may be made as soon as practicable before transfer or discharge when:

- The safety of individuals in the facility would be endangered.
- The health of individuals in the facility would be endangered.
- The resident's health improves sufficiently to allow a more immediate transfer or discharge.
- An immediate transfer or discharge is required by the resident's urgent medical needs.
- A resident has not resided in the facility for 30 days.

Before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the resident, in writing and in a language and manner they understand of the move.

Basic Care Facilities are covered under NDCC 50-10.2. Residents must be provided with thirty days notice of transfer/discharge, but the statute does not afford residents the right to appeal.

NDCC 50 – 10.2 states that Basic Care residents have the right not to be discharged except for:

- Medical reasons,
- The resident's welfare or that of other residents; or
- Nonpayment of one's rent or fees.

NDCC 50 – 10.2 states that Basic Care residents have the right to receive a thirty-day advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care, and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.

Respectfully submitted,

Helen Funk

State Long Term Care Ombudsman