

Basic Care & Assisted Living

Transfer and Discharge Rights



Questions & Answers

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The NDLTCA requested that answers to commonly asked questions regarding the Requirements for Transfer and Discharge be provided to all facilities in writing.

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50-10.2-01. Definitions [Basic Care and Assisted Living]

"Department" means the department of human services.

"Facility" means a skilled nursing care facility, **basic care facility, assisted living facility**, or swing-bed hospital approved to furnish long-term care services.

"Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.

"Resident" means a person residing in a facility.

50-10.2-02. Residents' Rights – Implementation [Basic Care and Assisted Living]

1. All facilities shall, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or any existing legal guardian of the resident a statement of the resident's rights while living in the facility. Within thirty days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident, and thereafter annually so long as the resident remains in the facility. The statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct. Facilities shall treat residents in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights: . . .

l. The right not to be transferred or discharged except for:

- (1) Medical reasons;
- (2) The resident's welfare or that of other residents;
- (3) Nonpayment of one's rent or fees; or
- (4) A temporary transfer during times of remodeling.

m. The right to receive at least a thirty-day written 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; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility. . . .

o. The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.

Chapter 75-02-07.1 Ratesetting for [Basic Care Facilities] published by the North Dakota Department of Human Services states the following:

75-02-07.1-01. Definitions.

"Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.

"Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the facility premises.

"Facility" means a provider licensed as a basic care facility, not owned or administered by state government, which does not meet the definition of an Alzheimer's and related dementia facility, traumatic brain injury facility, or institution for mental disease, which is enrolled with the department as a basic care assistance program provider.

"Medical care leave day" means any day that a resident is not in the facility but is in a licensed health care facility, including a hospital, swing bed, nursing facility, or transitional care unit, and is expected to return to the facility.

"Resident" means a person who has been admitted to the facility but not discharged.

"Therapeutic leave day" means any day that a resident is not in the facility or in a licensed health care facility.

Chapter 75-02-07.1-04. Participation Requirement [Basic Care]

- A facility may not receive aid to vulnerable aged, blind, and disabled person's assistance payments unless it complies with all provisions of this section.
- A facility may charge to hold a bed for a period in excess of the periods covered under subsection 2 or 3 of section 75-02-07.1-05 if:
 - The resident, or a person acting on behalf of the resident, has requested the bed be held and the facility informs the person making the request, at the time of the request, of the amount of the charge; and
 - For an eligible beneficiary, the payment comes from sources other than from the beneficiary's monthly income.
- A facility may not violate any resident rights as set forth in North Dakota Century Code section 50-10.2-02.

Chapter 75-03-34 Licensing of Assisted Living Facilities - 75-03-34-01. Definitions [Assisted Living]

"Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.

Chapter 75-03-34 Licensing of Assisted Living Facilities - 75-03-34-02. Licensing [Assisted Living]

4. In order to receive and maintain a license, an assisted living facility shall:

- d. Certify that operation of its facility is in compliance with all applicable federal, state, and local laws . . .

1. QUESTION:

What requirements must basic care and assisted living facilities follow in regard to a transfer or discharge?

ANSWER:

Requirements of North Dakota Century Code Chapter 50.10.2.

2. QUESTION:

Define a transfer versus a discharge.

ANSWER:

N.D. Administrative Code 75-01-03-08.1 (1) defines discharge and transfer as:

- "Discharge" means movement from a facility to non institutional setting when the discharging facility ceases to be legally responsible for the care of the resident. (Examples include but are not limited to: resident's home, adult foster care, children's home).
- "Transfer" includes movement from a facility to another institutional setting when the legal responsibility for care of the resident changes from transferring facility to the receiving institutional setting. (Examples include but are not limited to: hospital, another basic care facility, swing bed unit, ICF for Individuals with Intellectual Disabilities (IID)).

PLEASE NOTE: Transfer and discharge includes movement of a resident to a bed outside of the licensed 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 licensed facility (i.e. a room change in the same licensed facility).

3. QUESTION:

What does the contents of the written notice for transfer or discharge need to include?

ANSWER:

NDCC 50-10.2-02 (1.)(m) states that residents in a skilled nursing care facility, basic care facility, assisted living facility and swing-bed hospital have the right to receive at least a thirty-day written 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; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

NDCC 50-10.2 does not specify the contents of the written notice for transfer or discharge.

It is recommended the contents of the written notice include:

- The reason for transfer or discharge;
- The effective date of transfer or discharge;
- The location to which the resident is transferred or discharged;
- Transfer and discharge rights;
- The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

State Long-Term Care Ombudsman
Aging Services Division
1237 W Divide Ave Ste 6
Bismarck, ND 58501-1208
dhsagingombud@nd.gov
701-328-4617 or 1-855-462-5465

- For residents with intellectual and developmental disabilities, and/or with a mental disorder, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of these individuals (established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq. and the Protection and Advocacy for Mentally Ill Individuals Act); and

Office of Protection and Advocacy
400 E Broadway Ste 409
Bismarck, ND 58501-4071
panda_intake@nd.gov (underscore between panda and intake)
701-328-2950 or 1-800-472-2670

- The names of who received the notice (i.e. the resident **and** the member of the resident's immediate family or any existing legal guardian of the resident), and the dates when the notice was provided to these appropriate parties.
- In addition, if the information in the notice changes prior to effecting the transfer or discharge, the facility should update the recipients of the notice as soon as practicable once the updated information becomes available.

To meet the rule, it is important the contents of the written notice be in a language and manner the resident **and** a member of the resident's immediate family or any existing legal guardian of the resident understands. Key issues to consider would be language barriers, visual handicaps (i.e. **notice should be typed using at least a 12 point font**), and physical limitations.

PLEASE NOTE: There are no appeal rights for basic care and assisted living residents, so information related to appeals should not be included in their transfer or discharge notices.

4. QUESTION:

A 30 day notice must be issued for a change in a resident's level of care. Can a resident be transferred to a higher level of care prior to 30 days, if the resident agrees to the transfer?

ANSWER:

Yes. A 30 day notice must be issued for a change in the resident's level of care. However, the resident can agree to the transfer prior to the end date of the notice.

5. QUESTION:

At what point in time is the written transfer or discharge notice given?

ANSWER:

The state requirements are as follows:

NDCC 50-10.2-01 (3) defines facility as "a skilled nursing care facility, **basic care facility**, **assisted living facility**, or swing-bed hospital approved to furnish long-term care services." The rights of residents in these health care facilities related to provision of the written transfer or discharge notices is as follows:

NDCC 50-10.2-02 (1)(m) states the right to receive at least a thirty-day written 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; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

North Dakota Department of Health, Division of Health Facilities finds it acceptable if, for example, a resident is transferred on an emergent basis for medical reasons, or incompatibility which affects a resident's welfare or that of another on Saturday early a.m. but the transfer notice is not given until Monday morning (approximately 32-36 hours later). This will meet the requirements for provision of the written transfer notice in skilled nursing facility, basic care facility, assisted living facility, or swing-bed hospital consistent with NDCC 50-10.2-02(1)(m) discussed above.

There are also times when a resident is transferred to a hospital, and based on assessment, the determination is made that the resident's needs exceed the services that can be provided by the skilled nursing facility, basic care facility, assisted living facility, or swing-bed hospital on more

than a temporary basis. In this instance, the facility should notify the resident and a member of the resident's immediate family or any existing legal guardian of the resident as soon as the determination is made, and then issue a written discharge notice.

6. QUESTION:

Who has to receive the transfer notice when a resident is hospitalized?

ANSWER:

The state requirements for skilled nursing care facilities, basic care facilities, assisted living facilities and swing-bed hospitals at NDCC 50-01.2-02 (1) identify that the resident **and** a member of the resident's immediate family or any existing legal guardian of the resident should be notified of the residents rights. This would include notification of transfers and discharges.

7. QUESTION:

Will a telephone call to the hospitals discharge planner constitute a discharge or transfer notice?

ANSWER:

No. NDCC 50-10.2-02 (1.) (m) states the notification must be in writing. Therefore a telephone call **does not** constitute an acceptable transfer or discharge notice.

8. QUESTION:

If facility staff feel a resident is not capable of understanding the discharge or transfer notice, then does a notice need to be given to the resident?

ANSWER:

Yes. NDCC 50-10.2-02 (1.) (m) states, in part, “. . . each resident the following minimum rights: ... The right to receive at least a thirty-day written advance notice of any transfer or discharge . . .”

The resident and a member of the resident's immediate family or any existing legal guardian of the resident is to receive a written notice. This requirement **does not** allow for facility staff to determine which residents have the cognitive or physical status to receive a transfer or discharge notice.

9. QUESTION:

Does anyone, including a resident, resident representative, a durable power of attorney for health care, or a guardian, have to sign the transfer/discharge notice?

ANSWER:

No. NDCC 50-10.2-02 states, the resident and a member of the resident's immediate family or any existing legal guardian of the resident is to be notified of a transfer or discharge in writing.

This requirement **does not** require a transfer or discharge notice be signed by a resident and/or a member of the resident's immediate family or any existing legal guardian of the resident.

The facility **does need** to demonstrate that the requirements in 50-10.2-02 regarding transfer and discharge rights are met, however the facility has various options available to demonstrate compliance with these regulations. The provision that a resident and a member of the resident's immediate family or any existing legal guardian of the resident sign the notices would be a facility policy to verify that a transfer or discharge notice was given to the resident and a member of the resident's immediate family or any existing legal guardian of the resident.

10. QUESTION:

Can a facility transfer or discharge a resident due to a "significant change" in the resident's condition, or if a resident "refuses treatment?"

ANSWER:

The facility is prohibited from initiating a transfer or discharge unless at least one of the four criteria stated in NDCC 50-10.2-02 are met. The four criteria are as follows:

- Medical reasons;
- The resident's welfare or that of other residents;
- Nonpayment of one's rent or fees; or
- A temporary transfer during times of remodeling.

Therefore, unless a "significant change" in the resident's condition or unless a resident who is "refusing treatment" meets at least one of the four criteria listed above, the facility may not transfer or discharge a resident.

11. QUESTION:

Does a transfer notice have to be given to a resident who is being transferred to a psychiatric unit in a hospital because his/her welfare cannot be met in the basic care or assisted living facility? When should this notice be given?

ANSWER:

- Yes a transfer notice must be given. A facility is prohibited from initiating a transfer or discharge unless at least one of four criteria at NDCC 50-10.2-02 are met. Two of the four criteria are:
 - Medical reasons;
 - The resident's welfare or that of other residents;

If the facility initiates a transfer or discharge based on these reasons or any of the other criteria outlined at NDCC 50-10.2-02, the facility must provide notice in accordance with the requirements at NDCC 50-10.2-02.

- The timing of the notice depends upon specific circumstances regarding the resident condition. NDCC 50-10.2-02 (1.)(m) states the right to receive at least a thirty-day written 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; however, advance notice of transfer or discharge may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

12. QUESTION:

Does a transfer or discharge notice have to be given if it is the resident's choice to be discharged to their home, a board and care facility, or another basic care facility?

ANSWER:

Transfer and Discharge requirements apply when the facility **initiates** the transfer or discharge. The purposes of the requirements are to ensure that residents remain in the facility in the absence of any of the four criteria in NDCC 50-10.2-02 and to inform residents of their rights to question the decision of a facility relating to their transfer or discharge. If a resident or a member of the resident's immediate family or any existing legal guardian of the resident **initiates** a transfer or discharge voluntarily, then these requirements do not apply.

13. QUESTION:

Clarify the difference between a resident's choice to be transferred or discharged, and a facility's choice to transfer or discharge a resident.

ANSWER:

A resident's choice to be transferred or discharged is when a resident or a member of the resident's immediate family or any existing legal guardian of the resident **initiates** the transfer or discharge voluntarily. Transfer and discharge requirements do not apply in this circumstance. If there is documentation in the resident record that the resident or a member of the resident's immediate family or any existing legal guardian of the resident **initiated** the transfer or discharge and is in agreement with the transfer or discharge, then this is sufficient.

A facility's choice to transfer or discharge a resident is when the facility **initiates** (i.e. starts the discussion about) the transfer or discharge. The facility is prohibited from initiating a transfer or discharge unless at least one of four criteria stated in NDCC 50-10.2-02 are met. If the facility **initiates** a transfer or discharge based on at least one of the four criteria, the facility must provide

notice in accordance with the requirements.

- ✓ Initiated voluntarily (by a resident or a member of the resident's immediate family or any existing legal guardian of the resident) means **the facility has not influenced the decision to transfer or discharge in any way.**

14. QUESTION:

When a resident goes on therapeutic leave, does a discharge or transfer notice need to be given?

ANSWER:

No. A transfer or discharge notice does not need to be given when a resident goes on therapeutic leave.

15. QUESTION:

Can a resident waive his/her right to an involuntary 30 day transfer or discharge notice?

ANSWER:

No. A resident cannot waive any of his/her rights under the rules/requirements.

16. QUESTION:

Does a notice of transfer need to be provided to a resident and a member of the resident's immediate family or any existing legal guardian of the resident, when a resident is going to receive outpatient services?

ANSWER:

A notice of transfer for hospitalization does not need to be provided when a resident is going to receive outpatient services if the resident is not staying overnight in the hospital.

- ✓ A notice of transfer does not need to be given for a 23 hour hold.

17. QUESTION:

If a resident is hospitalized, can a facility say they will not allow the resident to return to the facility due to the fact they cannot provide the services this resident needs?

ANSWER:

Basic Care

NDCC 23-09.3-08.1 Admission of Residents to Basic Care Facility – Restrictions states the following: A basic care facility may admit and retain only an individual for whom the facility provides, directly or through contract, appropriate services within the facility to attain or maintain the individual at the individual’s practicable level of functioning. A basic care facility may admit or retain only an individual whose condition and abilities are consistent with the national fire protection association 101 life safety code requirements.

Basic care facilities must follow their policies and procedures on transfer, discharge, discharge planning, and referral services that are required through NDAC 33-03-24.1-09

Assisted Living

Chapter 75-03-34 Licensing of Assisted Living Facilities - 75-03-34-02. Licensing states,

4. In order to receive and maintain a license, an assisted living facility shall:
 - b. Maintain a written agreement with each tenant that includes the rates for rent and services provided to the tenant, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections;
 - d. Certify that operation of its facility is in compliance with all applicable federal, state, and local laws . . .

Chapter 50-32 Assisted Living Facilities - 50-32-05. Assisted living facilities - Duties - Educational requirements states,

1. Each assisted living facility must have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria.