

STATE OF MARYLAND



DHMH

Maryland Department of Health and Mental Hygiene

Office of Health Care Quality

Spring Grove Center, Bland Bryant Building

55 Wade Avenue, Catonsville, Maryland 21228-4663

Larry Hogan, Governor - Boyd K. Rutherford, Lt. Governor - Dennis R. Schrader, Secretary

To: Nursing Home Administrators

From: Patricia Tomsko Nay, MD, CMD
Executive Director, Office of Health Care Quality

Patricia Tomsko Nay, MD

Date: August 2, 2017

Re: Request for Facility's Relocation Plan

In an effort to ensure that all facilities' relocation plans adequately meet the current federal regulations for **non-emergent** resident relocation, OHCQ will be reviewing the plans for all nursing homes. All facilities must submit their relocation plan to their Survey Coordinator by September 6, 2017.

Plans may be emailed to your Survey Coordinator, faxed to 410-402-8234, or mailed to your Survey Coordinator at:

Office of Health Care Quality

~ 55 Wade Avenue
Bland Bryant Building
Catonsville, Maryland 21228

If any concerns are noted, administrators will be contacted regarding the submitted plan. Additionally, surveyors may interview pertinent staff during an on-site visit to determine if staff are knowledgeable of the facility's plan and their role in the plan.

Requirements for relocation plans are found in the Medicare State Operation Manual at F523, §483.70(l) and F524, §483.70(m). A copy of these requirements and the interpretive guidance is attached.

Please direct any questions regarding this transmittal to Margie Heald, Deputy Director of Federal Programs, Margie.heald@maryland.gov or 410-402-8101.

The following are the regulations and guidance from the State Operations Manual related to facility closure:

F523:

(l) Facility closure-Administrator.

Any individual who is the administrator of the facility must:

(1) Submit to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure;

(I) At least 60 days prior to the date of closure; or

(ii) In the case of a facility where the Secretary or a State terminates the facility's participation in the Medicare and/or Medicaid programs, not later than the date that the Secretary determines appropriate;

(2) Ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and

(3) Include in the notice the plan, that has been approved by the State, for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

F524:

(m) Facility closure.

The facility must have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure, as required at paragraph (l) of this section.

Interpretive Guidelines: §§483.75(r) and (s)

The facility has the following policies and procedures in place that ensure that in the event of a non-emergency voluntary or involuntary facility closure:

- The administrator's duties and responsibilities include provisions for providing written notice to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, as required by §483.75(r) and notice to the CMS RO as required under §489.52(a)(2).

- How the residents' primary physician, the State Medicaid Agency, and facility staff including vendors and contractors will be notified of the impending closure of the facility, to ensure continuity of care and that necessary goods and services are provided until the facility is closed;

- The facility will not close until all residents are transferred in a safe and orderly manner to the most appropriate setting in terms of quality, services, and location, as available and determined appropriate by the resident's interdisciplinary team after taking into consideration the resident's individual needs, choices, and interests; and,

- Each resident's complete medical record information including archived files, Minimum Data Set (MDS) discharge assessment, and all orders, recommendations or guidelines from the resident's attending physician is provided to the receiving facility or other provider at the time of the resident's discharge or relocation.

NOTE: While these policies and procedures are intended for a non-emergency voluntary or involuntary facility closure, a facility should consider (although not required) including these plans and procedures in their Emergency Preparedness Plans in the event of an emergency facility evacuation and temporary closure.

For all impending closures, the State Survey Agency must review and approve the facility's closure plans in order to determine that they contain the information necessary to identify the steps for an orderly facility closure, including the safe transfer and relocation of all residents and identify the individual(s) responsible for ensuring the plans and procedures are successfully carried out. At a minimum, the facility's plans and procedures must include:

Assurance that no new residents will be admitted to the facility on or after the date that the written notice of impending closure was provided to the State Survey Agency:

- The primary contact(s) responsible for the daily operation and management of the facility during the facility's closure process;
- The primary contact(s) responsible for the oversight of those managing the facility operations during the closure process;
- The roles and responsibilities of the facility's owners, administrator, or their replacement(s) or temporary managers/monitors during the closure process;
- Identification of any and all sources of supplemental funding, if available, to assist in maintaining the facility's daily operations until all residents are safely relocated and/or transferred;
- The process and procedures for providing timely written notification of the facility's impending closure, including its closure plan to the State Survey Agency, the State's LTC ombudsman, residents, their legal representatives or other responsible parties and the resident's primary physician;
- The process for providing notification of the facility's impending closure, including its closure plan to all facility staff, vendors, contractors and unions as appropriate;
- The provisions for ongoing operations and management of the facility and its residents and staff during the closure process that include: (1) payment of salaries and expenses to staff, vendors, contractors, etc.; (2) continuation of appropriate staffing to meet the needs of all residents; (3) ongoing assessment of each residents' care needs and the ongoing provision of necessary services and care including the provision of medications, services, supplies and treatments as ordered by the resident's physician/practitioner; (4) ongoing accounting, maintenance and reporting of resident personal funds; (5) the provision of appropriate resident care information to the receiving facility to ensure continuity of care; and (6) the labeling, safekeeping and appropriate transfer of residents' personal belongings, such as clothing, medications, furnishings, etc. at the time of transfer or relocation including contact information for missing items after the facility has closed; and,
- A process that provides assurance for how the closing facility will identify available facilities or other settings in terms of quality, services, and location, taking into consideration the need, choice, and best interests of each resident.

Provisions for sufficient preparation and orientation to residents to ensure a safe and orderly move from the facility might include: interviewing residents and their legal or other responsible parties, where applicable, to determine each resident's goals, preferences, and needs in planning for the services, location, and setting to which they will be moved; offering each resident the opportunity to obtain information regarding their community options, including setting and location; providing residents with information or access to information pertaining to the quality of the providers and/or services they are considering; psychological preparation or counseling of each resident as necessary; and making every reasonable effort to

accommodate each resident's goals, preferences and needs regarding receipt of services, location and setting.

Once notified of a facility's impending closure, if a copy of the facility's plan for the transfer and relocation of the residents was not included with the notice, the State Survey Agency should immediately request a copy of the facility's closure plans for their review and approval. In addition, the State Survey Agency should request the facility's admissions records to verify that no new residents have been admitted on or after the date that the notice of closure was provided.

A resident who had been temporarily transferred to an acute care setting, is on bed hold, or is on a temporary leave would not be considered to be a new admission upon return to the facility. However, each of these situations may need to be evaluated on a case by case review in order to determine if the clinical care or social needs of the resident may continue to be met by the facility if transferred back to the facility in closure. If it is determined that the clinical care or social needs of the resident cannot be met by the closing facility and the resident is not transferred back to the closing facility, the same notice requirements specified above apply to the resident and the resident's legal representatives, other responsible parties, and other parties as if the resident was still living in the facility.

Interview the individual(s) responsible for managing, overseeing, coordinating and implementing the plan to evaluate how each component of the plan is being operationalized.

NOTE: The review of certain components of the Interpretive Guidelines at §§483.75(r) and (s), such as an evaluation of the facility's closure plan, policies and procedures may be conducted off-site by the State Survey Agency and may include assistance from the State LTC ombudsman program as the State Survey Agency deems suitable and necessary.

When conducting an onsite survey prior to the impending closure, tour the facility and interview staff including the medical director, residents and family. Determine their involvement in and/or knowledge of the facility closure plans and the resident transfer process procedures. Determine through observation, interview and record review, as applicable:

That the delivery of resident care and services are continuing to be provided, monitored and supervised based upon the assessed needs and choices of each resident. If problems are noted it may be necessary to further investigate and review other quality of care regulations as appropriate. Do not cite these issues under the Facility Closure regulations:

Whether written notices were provided timely and that the notice included the expected date of the resident's transfer to another facility or other setting; and

o How the facility involved the resident, his/her legal representative or other responsible party, if applicable, and the resident's primary physician to determine the resident's goals, preferences and needs in planning for the services, location and setting to which they will be moved.

NOTE: Refer to §483.20(l)(3) - F284 for guidance for the post-discharge plan of care for an anticipated discharge which applies to a resident whom the facility discharges to a private residence or other home and community based setting, to another nursing home, or to another type of residential facility such as a board and care home or an intermediate care facility for individuals with intellectual disabilities or mental illness.

NOTE: §488.426(a)(1) and(2) - Transfer of residents, or closure of the facility and transfer of residents, gives authority to the State for temporary facility closure in emergency situations. For the purpose of regulations at §§483.75(r) and (s) as well as amendments made to §§483.12(a)(8) and 489.52(a)(2), if the State Survey Agency approves a facility's temporary relocation of residents during an emergency with the expectation that the residents will return to the facility, this would not be regarded as a facility closure under these requirements and the notification requirements under 483.75(r) would not be applicable. However, if a facility ultimately closes permanently due to an emergency, the administrator is required to provide proper notifications and follow the procedures outlined in this guidance.

In some cases, an administrator may not have direct control over an impending closure and implementing the facility's written notice and closure plans and procedures. For example, an administrator may be hired to oversee the facility's impending closure, although he/she was not present when the decision was made to close the facility, or the administrator was employed less than 60 days prior to impending closure. However, this does not relieve the current administrator from implementing or developing the plans and the procedures as required and providing notifications. In this example, the administrator must provide the closure notice and plan as soon as possible and begin implementing the plans for closure working with the State Survey Agency for the orderly and safe transfer and relocation of all residents. The new administrator or other temporary manager hired to assist with the facility closure must develop and/or implement the closure plans and work closely with the State Survey Agency and CMS RO to assure that appropriate procedures are implemented.

In a situation in which notice requirements were not met by the previous or current administrator, the State Survey Agency and the CMS RO may take action against the administrator as permitted under §488.446. Refer to Chapter 7 of the State Operations Manual for more information on enforcement actions in these situations.