

Nursing Home Compliance with Facility-Initiated Discharge Requirements

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Compliance officers of skilled nursing facilities should include review of this compliance issue in their 2021 workplans.

The Department of Health and Human Services Office of the Inspector General (OIG) has been working to determine the extent to which state long-term care ombudsmen, state survey agencies, and the Centers for Medicare and Medicaid Services (CMS) address facility-initiated discharges from nursing homes. In addition, the OIG will now examine the extent to which nursing homes meet CMS requirements for facility-initiated discharges.

The applicable OIG [Work Plan item](#) notes that a facility-initiated transfer or discharge of a resident from a nursing home can be an unsafe and traumatic experience for the resident and his or her family. In response to this concern, Congress passed the Nursing Home Reform Act of 1987 to protect residents against inappropriate facility-initiated transfer and discharge. The Work Plan item further indicates that data from the National Ombudsman Reporting System showed complaints related to “discharge/eviction” more frequently than any other concern from 2011 through 2016. The news media has also emphasized the rise in nursing home evictions.

In response to the volume of complaints of this nature, CMS also began an initiative to examine and mitigate facility-initiated discharges that violate federal regulations in 2017. A CMS [memorandum](#) addressed to state survey agency directors noted that while some discharges are driven by changes to payment source, the most frequently reported discharges relate to “behavioral, mental, and/or emotional expressions or indications of resident distress.” CMS further indicated that state survey agencies must transfer certain cases involving facility-initiated discharge violations to the CMS Regional Office (RO) for review. These include cases where (a) there is placement in a questionable or unsafe setting; (b) a resident remains hospitalized; (c) there is a pattern of discharge violations in the facility, or (d) there are other circumstances identified by the RO.

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