

**481—65.16 (135C) Discharge or transfer.** Procedures for the discharge or transfer of the resident shall be established and followed. (II, III)

**65.16(1) Discharge plan.** The decision to discharge a person and the plan for doing so shall be established through the participation of the resident, members of the interdisciplinary team and other resource personnel as appropriate for the welfare of the individual. (II, III)

*a.* Discharge planning shall begin within 30 days of admission and be carried out in accordance with the IPP. (II, III)

*b.* As changes occur in a resident's physical or mental condition necessitating services or care which cannot be adequately provided by the facility, the resident shall be transferred promptly to another appropriate facility pursuant to subrule 65.10(1). (II, III)

*c.* Notification shall be made to the next of kin, legal representative, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

*d.* Proper arrangements shall be made for the welfare of the resident prior to the transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

*e.* The licensee shall not refuse to discharge or transfer a resident when directed by the physician, resident, legal representative, or court. (II, III)

*f.* Advanced notification by telephone shall be made to the receiving facility prior to the transfer of any resident. (III)

*g.* When a resident is transferred or discharged, the current evaluation and treatment plan and progress notes for the last 30 days, as set forth in these rules, shall accompany the resident. (II, III)

*h.* Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

*i.* A discharge or transfer authorization and summary shall be prepared for each resident who has been discharged or transferred from the facility. It shall be disseminated to appropriate persons to ensure continuity of care and in accordance with the requirements to ensure confidentiality. (II, III)

*j.* A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility, and not as an intrafacility transfer. (II, III)

**65.16(2) Intrafacility transfer.** Residents shall not be arbitrarily moved from room to room within a health care facility. (II, III)

*a.* Involuntary relocation may occur only to implement goals and objectives in the IPP and in the following situations:

(1) Incompatibility with or behavior disturbing to roommates, as documented in the residents' records; (I, II)

(2) To allow a new admission to the facility which would otherwise not be possible due to separation of roommates by sex; (II, III)

(3) Reasonable and necessary administrative decisions regarding the use and functioning of the building. (II, III)

*b.* Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident or legal guardian include:

(1) Punishment or behavior modification; (II) and

(2) Discrimination on the basis of race or religion. (II, III)

*c.* If intrafacility relocation is necessary for reasons outlined in paragraph "a," the resident shall be notified at least 48 hours prior to the transfer and the reason shall be explained. The legal guardian shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or legal guardian within seven days unless documentation indicates that it was not possible to contact the legal guardian or obtain their signature. (II, III)

*d.* If emergency relocation is required to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be

documented. The family and legal guardian shall be notified immediately, or as soon as possible, of the condition requiring emergency relocation, and the notification shall be documented. (II, III)

**65.16(3) *Involuntary discharge or transfer—reasons.*** Residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C which states that a resident shall be transferred or discharged only for the following:

*a.* Medical reasons which include:

(1) Acute stage of alcoholism, mental illness, or an active state of a communicable disease; (I, II)

or

(2) Need for medical procedures as determined by a physician, or services which cannot be or are not being carried out in the facility; (I, II)

*b.* Resident's welfare or welfare of other residents which includes residents who are dangerous to themselves or other residents; (I) or

*c.* Nonpayment except as prohibited by Medicaid. (II)

**65.16(4) *Involuntary transfer or discharge—written notice.*** Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. (II) The 30-day requirement shall not apply in any of the following instances:

*a.* If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and written medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff. (I, II)

*b.* If the transfer or discharge is subsequently agreed to by the resident or by the resident's legal guardian, and notification is given to the legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance and care in the facility. (II)

**65.16(5) *Contents of notice.*** The notice required by 65.16(4) shall contain all of the following information:

*a.* The stated reason for the proposed transfer or discharge. (II)

*b.* The effective date of the proposed transfer or discharge. (II)

*c.* The following statement must be included:

"You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration date of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than 5 days following final decision of such hearing. To request a hearing or receive further information, call the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." (II)

**65.16(6) *Stay of transfer or discharge.*** A request for a hearing made under 65.16(5) "c" shall stay a transfer or discharge pending a hearing or appeal decision. (II)

*a.* The type of hearing determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, and legal guardian not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party

is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. (II)

*b.* The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to department rules. The licensee or designee shall have the opportunity to present oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and legal guardian shall also have an opportunity to present oral testimony or written material to show just cause why a transfer or discharge should not be made; the burden of proof rests on the party requesting the transfer or discharge. (II)

*c.* Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact, conclusions of law, and issue a decision and order. This decision shall be mailed by regular mail to the licensee, resident, and legal guardian within 10 working days after the hearing has been concluded. (II)

*d.* Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

A request for review of a proposed decision in which the department is the final decision maker shall be made within 15 days of issuance of the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews a proposed decision upon its own motion within 15 days of the issuance of the decision. (II)

*e.* A copy of the notice required by 65.16(4) shall be personally delivered to the resident by the licensed facility and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

*f.* If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

*g.* The involuntary transfer or discharge shall be discussed with the resident, legal guardian, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and shall be made a part of the resident's record. (II)

*h.* The resident shall receive counseling services before (by the sending facility) and after (by the receiving facility) the involuntary transfer to minimize the possible adverse effects of the involuntary transfer. Counseling shall be documented in the resident's record. Counseling shall be provided by a qualified individual who meets one of the following criteria:

- (1) Has a bachelor's or master's degree in social work from an accredited college; (II)
- (2) Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency; (II)
- (3) Has been employed in a social work capacity for a minimum of four years in a public or private agency; (II) or
- (4) Is a licensed psychologist or psychiatrist. (II)

*i.* The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be discharged or transferred. (II)

*j.* The receiving health care facility of a resident involuntarily discharged or transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

*k.* In the case of an emergency transfer or discharge as outlined in 65.16(4) “*b*,” the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident’s file and it must contain all the information required by 65.16(5). In addition, the notice must contain a statement in not less than 12-point type, which reads:

“You have a right to appeal the facility’s decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals (hereinafter referred to as “department”) within seven days after receiving this notice. You have the right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.”

A hearing requested pursuant to this subrule shall be held in accordance with 65.16(6) “*a*,” “*b*” and “*c*.” (II)

*l.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility’s license by the department. In the case of a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities. (II)

This rule is intended to implement Iowa Code sections 135C.14(8), 135C.31, 135C.43, and 135C.46.