

3701-61-03

Notice and hearing request requirements.

(A) The administrator of the home shall notify a resident in writing, and the resident's sponsor or legal representative in writing by certified mail, return receipt requested, in advance of any proposed transfer or discharge from the home. The administrator shall send a copy of the notice to the department. The notice shall be provided to the resident, and the resident's sponsor or legal representative, at least thirty days in advance of the proposed transfer or discharge, unless any of the following apply:

- (1) The resident's health has improved sufficiently to allow a more immediate discharge or transfer to a less skilled level of care;
- (2) The resident has resided in the home less than thirty days.
- (3) An emergency arises in which the safety of individuals in the home is endangered;
- (4) An emergency arises in which the health of individuals in the home would otherwise be endangered;
- (5) An emergency arises in which the resident's urgent medical needs necessitate a more immediate transfer or discharge.

In any of the circumstances described in paragraphs (A)(1) to (A)(5) of this rule, the notice shall be provided as many days in advance of the of the proposed transfer or discharge as is practicable. The administrator shall obtain written acknowledgement of receipt of the notice from the resident unless the resident is unable to acknowledge receipt.

(B) The notice required under paragraph (A) of this rule shall include all of the following:

- (1) The reasons for the proposed transfer or discharge;
- (2) The proposed date the resident is to be transferred or discharged;
- (3) The proposed location to which the resident is to be transferred or discharged;
- (4) Notice of the following information pursuant to this rule and section 3721.161 of the Revised Code:
 - (a) The right of the resident, and the resident's sponsor or legal representative to an impartial hearing at the home on the proposed transfer or

discharge;

- (b) The manner in which and the resident or the resident's sponsor may request a hearing pursuant to this rule;
 - (c) The time within which the resident or the resident's sponsor may request a hearing as provided in paragraph (D) of this rule; and
 - (d) The time within which the resident or the resident's sponsor may request a hearing as provided in paragraph (E) of this rule. This information shall be placed in bold type within the notice.
 - (5) A statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date;
 - (6) The address and telephone number of the legal services office of the department;
 - (7) The name, address, and telephone number of the state designated regional long-term care ombudsperson program serving the area in which the home is located and, if the resident has a developmental disability or mental illness, the name, address, and telephone number of the Ohio legal rights service.
- (C) No home shall transfer or discharge a resident before the date specified in the notice required by this rule unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.
- (D) Pursuant to division (A) of section 3721.161 of the Revised Code the resident or resident's sponsor may challenge a proposed transfer or discharge by submitting a written request for a hearing to the department not later than thirty days after the resident or resident's sponsor receive notice of the proposed transfer or discharge, whichever is later. On receiving the request the department shall conduct a hearing in accordance with section 3721.162 of the Revised Code and paragraphs (A) to (E) of rule 3701-61-04 of the Administrative Code to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code.
- (E) Except in the circumstances described in paragraphs (A)(1) to (A)(5) of this rule, if a

resident or resident's sponsor submits a written hearing request not later than ten days after the resident or resident's sponsor received notice of the proposed transfer or discharge, whichever is later, the home shall not transfer or discharge the resident unless the department determines after the hearing that the transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code or the department's determination to the contrary is reversed on appeal.

- (F) If a resident or resident's sponsor does not request a hearing pursuant to paragraph (D) of this rule the home may transfer or discharge the resident on the date specified in the notice required by paragraph (A) of this rule or thereafter, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.
- (G) If a resident or resident's sponsor requests a hearing pursuant to paragraph (D) of this rule and the home transfers or discharges the resident before the department issues a hearing decision, the home shall readmit the resident in the first available bed if the department determines after the hearing that the transfer does not comply with division (A)(30) of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.
- (H) Transfer or discharge actions shall be documented in the resident's medical record if there is a medical basis for the action.

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CERTIFIED ELECTRONICALLY

Certification

12/07/2009

Date

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