

3701-61-03

**Notice and hearing request requirements; ~~impartial hearing by the department of health.~~**

(A) ~~Except in an emergency, the~~ 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. ~~Two copies of the notice shall be provided to the resident.~~ 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 ~~either~~ any of the following ~~applies~~ 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.

~~In the case of a resident described in paragraph (A)(1) or (A)(2) of this rule, the notice shall be provided as many days in advance 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.~~

(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 divisions (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;

- (2)(4) Notice of 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, and of the manner in which and the time within which the resident or his sponsor may request a hearing under rule 3701-61-02 of the Administrative Code pursuant to this rule and section 3721.161 of the Revised Code;
- (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;
- (3)(6) The address and telephone number of the legal services office of the department;
- (4)(7) The name, address, and telephone number of the state designated regional long-term care ~~ombudsman~~ 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.
- (C)(D) Pursuant to division (A) of section 3721.161 of the Revised Code The the resident or his resident's sponsor may challenge a proposed transfer or discharge request an impartial hearing by mailing submitting a written request for a hearing to the legal services office of the department not later than ten thirty days after the resident and his 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.

~~(D) If requested, an impartial hearing shall be held by the department within ten days after the department receives the written request for a hearing. A representative of the department shall preside over the hearing.~~

~~(E) The director may order a consolidation of hearings when the residents or sponsors challenge a transfer or discharge that involves a common set of circumstances. Such consolidation of hearings may be made for the convenience of hearings, for preventing the multiplicity of actions and for the saving of costs. The director may order the consolidation only if the consolidated hearing can be held no later than ten days after the director receives the written requests for the hearings.~~

~~(F) The hearing shall be held in the home and the date and time of the hearing shall be determined by the representative of the department presiding over the hearing. Notice of the date, time, and place of the hearing shall be sent by certified mail to the administrator, resident, and any sponsor within two full business days for employees of the department after receipt of a request. This notice shall also inform the administrator, resident, and any sponsor that they have a right to appear at the hearing in person or by their attorneys or other representatives. No scheduled hearings may be postponed except by agreement of both parties. 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 on an ex parte basis.~~

~~(G) The administrator shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made pursuant to division (A)(30) of section 3721.13 of the Revised Code. The resident and any sponsor shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. The representative of the department, administrator, resident, any sponsor and any representatives of the foregoing may~~

~~ask questions of any person participating in the hearing. The hearing shall be informal in nature but all parties shall respect directives of the representative of the department for the orderly conduct of the hearing. The evidence shall be presented under oath and the hearing shall be tape recorded. Any person participating in the hearing may obtain a copy of the tape upon payment of the cost of reproduction to the director.~~

~~(H) An impartial hearing on resident transfer or discharge is not subject to section 121.22 of the Revised Code.~~

~~(I)(H) The home shall document the medical reasons for the transfer~~ Transfer ~~or discharge actions shall be documented~~ in the resident's medical record upon ~~proposal of the transfer or discharge~~ if there is a medical basis for the action.

Effective:

R.C. 119.032 review dates: 09/30/2004

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Certification

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Date

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