



Preface

- This presentation is meant to provide an overview of some key issues related to involuntary discharges and provide tips for handling these difficult situations.
- This presentation is for educational purposes only. It does not constitute legal advice, and it is not intended to take the place of legal advice.
- When involuntary discharge situations arise, it is best to consult an attorney with expertise in this area prior to effectuating the discharge.

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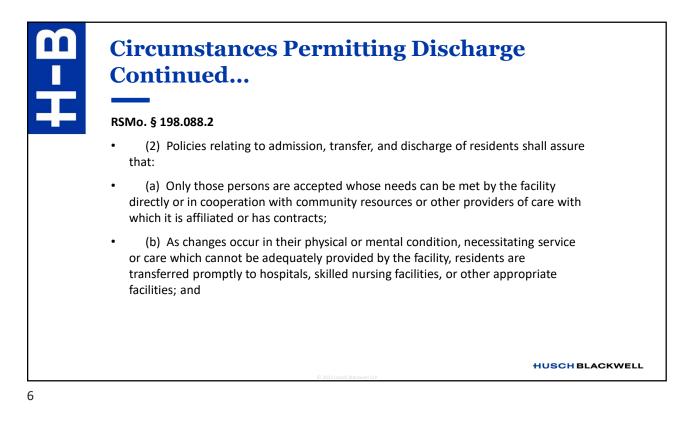




Circumstances Permitting Discharge

- Generally, facilities, including assisted living facilities, must permit residents to remain in the facility and may not transfer or discharge residents from the facility (without their consent) unless:
 - The resident's welfare and the resident's needs cannot be met in the facility (inability to meet needs);
 - The resident's health has improved sufficiently so the resident no longer needs the services by the facility;
 - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident (unsafe environment);
 - The health of individuals in the facility would otherwise be endangered;
 - The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility;
 - The facility ceases to operate.
- See 42 C.F.R. § 483.15(c)(1)(i)(A)-(F); § 19 C.S.R. 30-82.050(2)

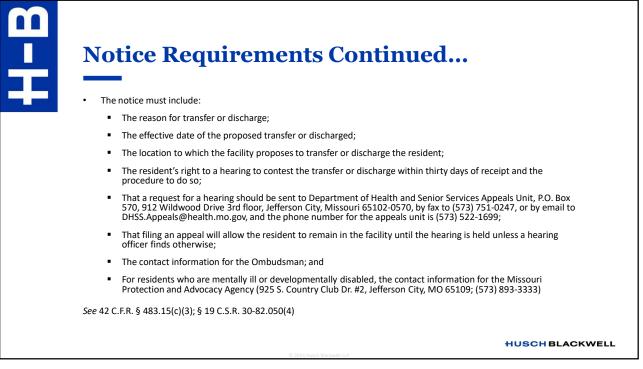
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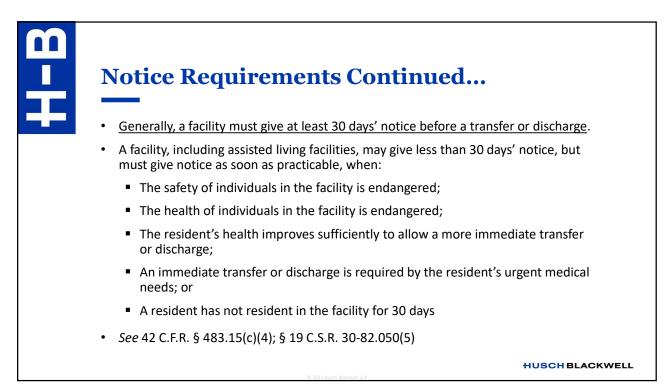


Notice Requirements

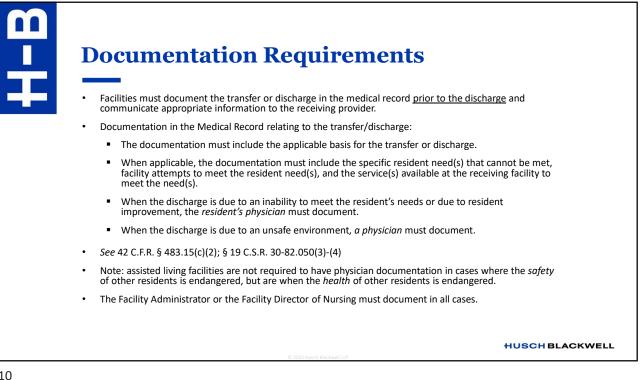
- <u>Prior to</u> a transfer or discharge, a facility must provide notice to the resident and the resident's representative(s) of the transfer or discharge and the reasons for it in writing and in a language and manner that they understand.
- The facility must also send a copy of the notice to the Ombudsman.

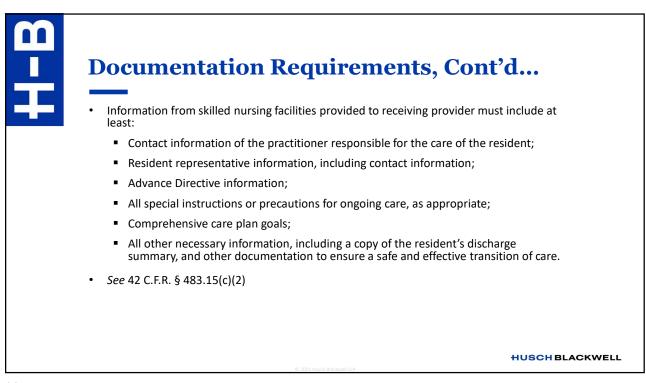
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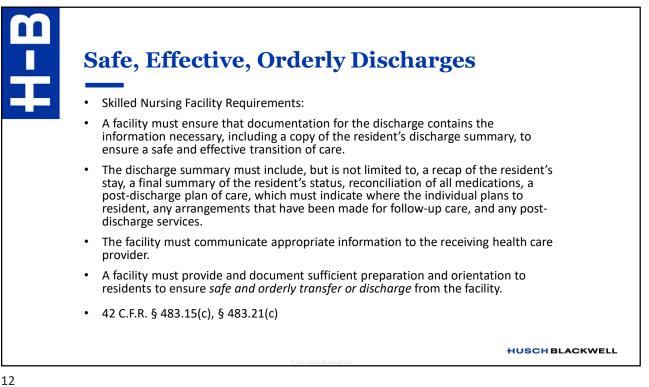








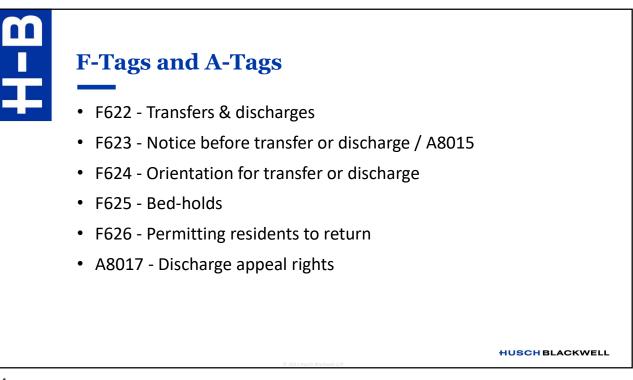




Notes from Regulatory Guidance for skilled nursing facilities

- Facilities are required to determine their capacity and capability to care for the residents they
 admit. Therefore, facilities should not admit residents whose needs they cannot meet based on the
 facility assessment.
- Resident transfers to an acute care setting are considered facility-initiated transfers, NOT discharges, because the resident's return is generally expected.
 - In a situation where the facility initiates discharge while the resident is in the hospital following emergency transfer, the facility must have evidence that the resident's status at the time the resident seeks to return to the facility (not at the time the resident was transferred for acute care) meets one of the allowed criteria.
- It is the responsibility of the facility to notify the resident of changes in payment status, and the
 facility should ensure the resident has the necessary assistance to submit any third-party paperwork
 (if paperwork has been submitted and a decision is pending, that is not considered nonpayment
 status).
- CMS, SOM, Appendix PP (F622); available at: <u>https://www.cms.gov/files/document/appendix-pp-guidance-surveyor-long-term-care-facilities.pdf</u>

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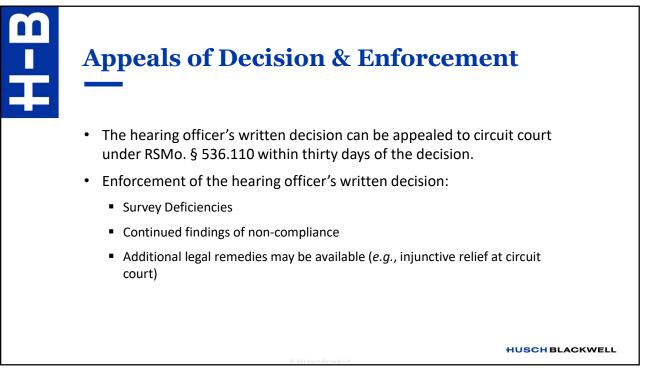


Appeal Procedures

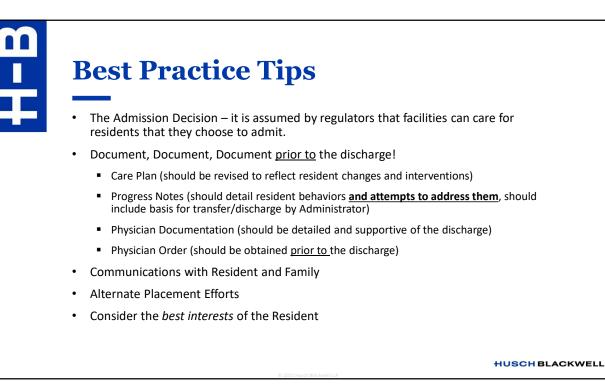
- Facilities owned by an entity registered with the Secretary of State (*e.g.*, an LLC) <u>must be</u> represented by an Attorney at the discharge hearing.
- The hearing notice is typically issued promptly after the appeal is filed with a hearing set ~ 30-60 days out. Continuances may be granted.
- Exhibits and witness lists are due seven business days in advance of the hearing.
 - Typically, at minimum, the Administrator, DON, and Social Worker should attend the hearing.
- A hearing on a Motion to Set Aside Stay *may be* consolidated with the discharge hearing.
- The burden of showing that the facility has complied with all requirements for appropriate discharge of the resident is on the facility.
- Decision times vary. The facility cannot discharge the resident without the written decision (unless the resident consents).
- See § 19 C.S.R. 30-82.050

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Best Practice Tips & Scenarios



Scenario #1

A resident with a mental illness demonstrates unsafe behaviors at the facility (destruction of property, assaulting staff, threatening other residents); interventions aimed at stopping the behaviors have failed; alternative placement has not been found despite multiple referrals.

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Scenario #2

A resident with dementia resides in the facility's memory care unit. In the last several months, the resident's behaviors have worsened. He/She wanders in and out of other residents' rooms, which upsets them. At times, he/she is sexually inappropriate (*e.g.*, attempts to hold hands or kiss other residents without their consent, thinking at the time that the other residents are his/her spouse). His/her family frequently complains about the facility and threatens to sue, but also say that they do not want the resident moved to another facility and they have not consented to the facility sending out referrals.

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Questions??? Thank You!



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