Jeff Landry
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Michael Harrington, MBA, MA
SECRETARY

State of Louisiana

Louisiana Department of Health

MEMORANDUM

FROM: Tasheka Dukes, Deputy Assistant Secretary

TO: Intermediate Care Facilities for the Developmentally Disabled

DATE: November 9, 2024

RE: Involuntary Discharges of Clients

This notice serves as a reminder to Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) of the requirements of involuntary discharges of clients. All involuntary discharges of clients MUST follow the state and federal regulations found in LAC Tit. 48:I.85 §8543, LAC Tit. 50: I. §30905, and 42 CFR 483.440(b)(4)(i) - 483.440(b)(5)(ii) as excerpted below.

LAC Tit. 48.I. §8543. Voluntary and Involuntary Transfers and Discharges

A-D

E. Prior to discharge, the ICF/DD's staff shall ensure that the individual is aware of and understands his/her aftercare plan and the department's representative shall be notified of the plans.

F. If the client is being discharged to another ICF/DD or provider, representatives from the staff of both the sending and receiving facilities or providers shall confer as often as necessary to share appropriate information regarding all aspects of the client's care and habilitation training. **The transferring ICF/DD is responsible for developing a final summary of the client's developmental, behavioral, social, health and nutritional status, and with the consent of the client and/or legal representative, providing a copy to authorized persons and agencies**. A copy of the summary shall be included in the client's record and must accompany the client upon discharge to another ICF/DD or provider. This summary shall include:

1. the name and home address of the individual and, where appropriate, the legally responsible person;
2. the name, address, telephone number of the ICF/DD;

3. a summary of services provided during care;
4. a summary of growth and accomplishments during care;
5. the assessed needs which remain to be met and alternate service possibilities which might meet those needs; and
6. a statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

G. The ICF/DD shall have a written policy concerning unplanned, involuntary discharge. The policy shall ensure that emergency discharges initiated by the ICF/DD take place only when the health and safety of an individual or other individuals might be endangered by the individual's further placement at the agency.

H. The ICF/DD shall give immediate notice of the client's discharge. The resident and his/her responsible party and/or legal representative or interested family member if known and available, have the right to be notified in writing in a language and manner they understand of the transfer and discharge. The notice must be given no less than thirty days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency. A copy of the notice must be placed in the client's clinical record and a copy transmitted to:

1. the client;
2. a family member of the client, if known;
3. the client's legal representative and legal guardian, if known;
4. the Community Living Ombudsman Program;
5. LDH, Health Standards Section;
6. the regional office of the Office for Citizens with Developmental Disabilities (OCDD) for assistance with the placement decision;
7. the client's physician; and
8. appropriate educational authorities.

I. The resident, or his legal representative or interested family member, if known and available, **has the right to appeal any transfer or discharge** to the Department of Health, which shall provide a fair hearing in all such appeals.

J. The facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his legal representative or interested family member, if known and available, shall be consulted in choosing another facility if facility placement is required.

K. When arranging for placement following an emergency discharge, an ICF/DD shall consult with the receiving ICF/DD and the regional office of OCDD, to ensure that the individual is placed in a program that reasonably meets the individual's needs. The ICF/DD shall have a written report detailing the circumstances leading to each unplanned discharge.

LAC Tit. 50. §30905. Involuntary Transfer or Discharge

A. Conditions. **Involuntary transfer or discharge of a client may occur only under the following conditions:**

1. the transfer or discharge is necessary for the client's welfare and the client's needs cannot be met in the facility;

2. the transfer or discharge is appropriate because the client's health has improved sufficiently, therefore, the client no longer needs the services provided by the facility;

3. the safety of individuals in the facility is endangered;

4. the health of individuals in the facility would otherwise be endangered;

5. the client has failed, after reasonable and appropriate notice, to pay for the portion of the bill for services for which he/she is liable or when the client loses

financial eligibility for Medicaid. When a client becomes eligible for Medicaid after admission to a facility, the facility may charge the client only allowable charges under Medicaid; and

6. the facility ceases to operate.

B. When the facility proposes to transfer or discharge a client under any of the circumstances specified in Paragraphs A.1-5 above, the client's clinical records must be fully documented. The documentation must be made by the following:

1. the client's physician when transfer or discharge is necessary as specified in Paragraph A.1 or 2 as listed above; or

2. any physician when transfer or discharge is necessary as specified in Paragraph A.4 as listed above. Before an interfacility transfer or discharge occurs the facility must:

a. notify the client of the transfer or discharge and the reason for the move. The notification shall be in writing and in a language and manner that the client understands. A copy of the notice must be placed in the client's clinical record and a copy transmitted to:

i. the client;

ii. a family member of the client, if known;

iii .the client's legal representative and legal guardian, if known;

iv. the Community Living Ombudsman Program;

v. LDH – Health Standards Section;

vi. the regional office of OCDD for assistance with the placement decision;

vii. the client's physician;

viii. appropriate educational authorities; and

ix. a representative of the client's choice;

b. record the reasons in the client's clinical record;

c. a interdisciplinary team conference shall be conducted with the client, family member or legal representative and an appropriate agency representative to update the plan and develop discharge options that will provide reasonable assurances that the client will be transferred or discharged to a setting that can be expected to meet his/her needs.

3. the facility must issue the notice of transfer or discharge in writing at least 30 days before the resident is transferred or discharged, except under the circumstances described in Subparagraph a below.

a. Notice may be made as soon as practicable before transfer or discharge when:

i. the safety of individuals in the facility would be endangered;

ii. the health of individuals in the facility would be endangered;

iii. the client's health improves sufficiently to allow a more immediate transfer or discharge; or

iv. an immediate transfer or discharge is required by the client's urgent medical needs as determined by a physician.

b. Notice may be made at least 15 days before transfer or discharge in cases of nonpayment of a bill for cost of care.

c. The written notice must include:

i. the reason for transfer or discharge;

ii. the effective date of transfer or discharge;

iii. the location to which the client is transferred or discharged;

iv. an explanation of the client's right to have personal and/or third party representation at all stages of the transfer or discharge process;
v. the address and telephone number of the Community Living Ombudsman Program;
vi .the mailing address and telephone number of the agency responsible for the protection of individuals with developmental disabilities;
vii. names of facility personnel available to assist the client and family in decision making and transfer arrangements;
viii. the date, time and place for the follow-up interdisciplinary team conference to make a final decision on the client's/legal representative's choice of new facility of alternative living arrangement;
ix. an explanation of the client's right to register a complaint with LDH within three days after the follow-up interdisciplinary team conference;
x. a statement regarding appeal rights that reads:

"You or someone acting on your behalf has the right to appeal the health facility's decision to discharge you. The written request for a hearing must be postmarked within 30 days after you receive this notice or prior to the effective date of the transfer or discharge. If you request a hearing, it will be held within 30 days after the facility notifies the Division of Administrative Law of the witnesses who shall testify at the discharge hearing as well as the documents that will be submitted as evidence. You will not be transferred/discharged from the facility until a decision on the appeal has been rendered;" and

xi. the name of the director, and the address, telephone number, and hours of operation of the Division of Administrative Law;

C. The facility shall provide all services required prior to discharge that are contained in the final update of the individual habilitation plan and in the transfer or discharge plan.
D. The facility shall be responsible for keeping the client, whenever medical or other conditions warrant such action, for as long as necessary even if beyond the proposed date of transfer or discharge, except in emergency situations.
E. The facility shall provide transportation to the new residence unless other arrangements are preferred by the client/legal representative or the receiving facility.
F. Appeal of Transfer or Discharge. If the client appeals the transfer or discharge, the ICF/DD facility must permit the client to remain in the facility and must not transfer or discharge the client from the facility until the final appeal decision has been reached or a pre-hearing conference is held at the request of the facility. Failure to comply with these requirements will result in termination of the facility's provider agreement.
G. If nonpayment is the basis of a transfer or discharge, the client shall have the right to pay the balance owed to the facility up to the date of the transfer or discharge and then is entitled to remain in the facility.

42 CFR 483.440(b)(4)(i) - 483.440(b)(5)(ii)

(b) Standard: Admissions, transfers, and discharge.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

For questions regarding the requirements for involuntary discharges please contact Wanda Rodney-Warner by email at wanda.rodney-warner@la.gov or by phone, 225-342-5780.

Sincerely,

DocuSigned by:
Tasheka Dukes
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Tasheka Dukes, RN, BSN, MHA
Deputy Assistant Secretary / Director