



Joshua M. Gilbert
Senior Associate
Columbus
614.227.7736
jgilbert@bricker.com

COVID-19 Update: CMS issues guidance on transferring long-term care residents

April 20, 2020

On April 13, 2020, the Centers for Medicare & Medicaid Services (CMS) released a [memorandum](#) providing additional information on transfers and discharges between long-term care (LTC) facilities for the purpose of cohorting residents based on their COVID-19 status (i.e., positive, negative, unknown or observation). CMS previously issued [COVID-19 Long-Term Care Facility Guidance](#) alerting LTC facilities to steps they should take to prevent COVID-19 transmission. It also issued [blanket waivers](#) of certain Medicare conditions of participation for LTC facilities, including certain transfer and discharge requirements.

The memorandum provides further guidance in response to recent questions regarding cohorting patients and outlines three different permitted transfer or discharge scenarios. Generally, if two or more certified LTC facilities want to transfer or discharge residents between themselves for the purpose of cohorting, they do not need any approval to do so. However, if a certified LTC facility wants to transfer or discharge residents to a non-certified location for the purpose of cohorting patients, it needs approval from the state agency, such as the Ohio Department of Health, or other similar state agency in other states.

The three permitted transfer or discharge scenarios highlighted by CMS are:

1. Transfers between certified LTC facilities to create COVID-19 and non-COVID-19 facilities

CMS is waiving numerous requirements to allow certified LTC facilities to transfer or discharge residents to another certified LTC facility for the following cohorting purposes:

- a. transferring residents with symptoms of respiratory infection or a confirmed diagnosis of COVID-19 to a facility dedicated to caring for COVID-19 patients
- b. transferring residents who do not have symptoms of a respiratory infection or a confirmed diagnosis of COVID-19 to a facility dedicated to preventing residents from contracting COVID-19
- c. transferring residents who do not have symptoms of a respiratory infection or a confirmed diagnosis of COVID-19 to a facility that will observe residents for any signs or symptoms of a respiratory infection over a period of 14 days

LTC facilities that transfer residents for these purposes will have the following requirements waived for the necessary transfer or discharge:

- informing residents of the risks and benefits of proposed care and giving residents the option to choose an alternative option if the resident prefers
- notifying residents of the transfer
- notifying residents as soon as possible prior to the transfer or discharge
- content requirements for the notice to the resident, including the reason for the transfer or discharge
- limitations on room changes
- providing notice of the state's bed-hold policy
- developing a baseline care plan within 48 hours of a resident's admission
- developing a comprehensive care plan within 48 hours of the resident's admission in place of the baseline care plan
- developing a comprehensive care plan within seven days after the comprehensive assessment

Note that the waivers do not suspend or curtail a resident's right to participate in and be fully informed of their care and to request discontinuation of care or treatment.

2. Transfers between certified LTC facilities and a non-certified location that is approved by the state

CMS is waiving the building certification requirements in 42 C.F.R. § 483.90 to allow non-certified LTC buildings to be temporarily certified if there is a need to isolate COVID-19 positive residents that is not currently feasible in the existing LTC facility structure. To qualify for the waiver, the state agency must approve the non-certified location as one that sufficiently addresses the safety and comfort of patients and staff. The waived requirements include compliance with Health Care Facilities Code, compliance with the Life Safety Code, and various requirements related to

emergency power, equipment and residents' rooms.

CMS is also waiving these requirements to allow certified LTC facilities to transfer residents to another facility, such as a COVID-19 isolation and treatment location, when services at the location are provided "under arrangement" on behalf of the certified LTC facility, as long as it is not inconsistent with the state's emergency preparedness or pandemic plan or as directed by the state health department. In that case, the transferring LTC facility is not required to issue a formal discharge, and the LTC facility should continue to bill Medicare for the services and reimburse the "under arrangement" location.

3. Transfers of COVID-19 residents to federal/state-run facilities

CMS noted that waivers are not necessary for transfers of COVID-19 residents to a federal- or state-run facility that is staffed by federal or state personnel by order of governmental authority, such as FEMA, as long as the transfer is not inconsistent with a state's emergency preparedness or pandemic plan or as directed by the state health department. In that case, the LTC facility would not continue to receive reimbursement for the resident's care, however.

Under any of these scenarios, LTC facilities should ensure that they receive confirmation from the receiving facility that the facility will accept the resident prior to any transfer and conduct transfers in a way that protects residents' health and safety.