

Nursing Home Transfer and Discharge Notification Waiver

HEALTH REGULATION DIVISION, LICENSING & CERTIFICATION

ATTENTION

The Minnesota Department of Health (MDH) Health Regulation Division (HRD) is temporarily waiving the resident notification timeframes for transfer and discharge of nursing home residents. The waiver of these timeframes, contained in the Health Care Bill of Rights, allows nursing home facilities to become specialized sites in response to COVID-19 care needs.

Underlined below under Minnesota Statutes 144.651 Subd. 29 are the notification timeframes waived. All other statutory language not underlined below is not waived:

*Subd. 29. **Transfers and discharges.** Residents shall not be arbitrarily transferred or discharged. Residents must be notified, in writing, of the proposed discharge or transfer and its justification no later than 30 days before discharge from the facility and seven days before transfer to another room within the facility. This notice shall include the resident's right to contest the proposed action, with the address and telephone number of the area nursing home ombudsman pursuant to the Older Americans Act, section 307(a)(12). The resident, informed of this right, may choose to relocate before the notice period ends. The notice period may be shortened in situations outside the facility's control, such as a determination by utilization review, the accommodation of newly admitted residents, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment for stay unless prohibited by the public program or programs paying for the resident's care, as documented in the medical record. Facilities shall make a reasonable effort to accommodate new residents without disrupting room assignments.*

Requirements Being Waived

Emergency Executive Order 20-32 (PDF) (<https://www.leg.state.mn.us/archive/execorders/20-32.pdf>) issued on April 8, 2020, allows the Commissioner of Health to temporarily delay, waive, or modify certain requirements so that providers can take necessary action to protect Minnesotans.

Only the 30-day and 7-day notification timeframes related to are now waived:

- [Minnesota Health Care Bill of Rights, Statute 144.651, Subd. 29](https://www.revisor.mn.gov/statutes/cite/144.651)
(<https://www.revisor.mn.gov/statutes/cite/144.651>)

This means that only in response to COVID-19, nursing homes are not required to provide the notification of their proposed discharge at least 30 days before the discharge from the facility or 7 days before transfer to another room in the facility. Any reason other than related to COVID-19 for transfer or discharge action, however, must follow the applicable notification time frames of 30 days or 7 days.

What HRD is Doing Differently

Minimum notification timeframes for transfers and discharges of 30 days and 7 days will not be enforced when related to COVID-19 response.

Implementation Guidance

MDH supports healthcare facilities' efforts to protect the health and safety of residents and offers the following guidance to assure safety during COVID-19-related restrictions.

You must:

Prior to the transfer and discharge where this waiver is used communicate via email to both MDH at health.fpc-web@state.mn.us and the Long-Term Care (LTC) Ombudsman at MBA.OOLTC@state.mn.us:

- The names of the residents being moved and location moving to;
- How each individual's health, safety, and individual preferences will be assured;
- Whether the resident transferred or discharged is in a secured memory unit and will be safely transferred or discharged to a secured memory unit; and
- A communication plan to the resident/resident representative for how the facility will accommodate each individual resident's wishes to return after COVID-19 emergency concludes.

Timeframe

This waiver will be in place for the period of the declared peace-time emergency and up to 60 days past the end of the emergency.

Situations Not Included in this Waiver

This waiver is only available for a facility to respond to COVID-19. All other requirements under 144.651, Subd. 29 are in effect. This includes that residents must be notified, in writing, of the proposed discharge or transfer and its justification before discharge from the facility and before transfer to another room within the facility. This notice shall include the resident's right to contest the proposed action, with the address and telephone number of the area nursing home ombudsman.

EMERGENCY EXECUTIVE ORDER HEALTH REGULATION DIVISION PROVISION:
LICENSING & CERTIFICATION – NURSING HOME TRANSFER AND DISCHARGE

All other state and federal regulations not waived during COVID will continue to be enforced. Not waived is 2019 Minnesota Legislation found under Minnesota Statutes 144.6512 Retaliation in Nursing Homes Prohibited that includes transfer and discharge. This can be found on the [Minnesota Legislature's statutes website \(https://www.revisor.mn.gov/statutes/cite/144.6512\)](https://www.revisor.mn.gov/statutes/cite/144.6512).

Questions?

If the resident and/or legal representative has questions about their rights, the Office of Ombudsman for Long-Term Care is encouraged to be contacted. Contact the office of Ombudsman for Long-Term Care by phone: Intake Line: Metro 651-431-2555 or toll-free 800-657-3591, fax 651-431-7452, or email: MBA.OOLTTC@state.mn.us.

To obtain this information in a different format or discuss questions you have regarding the Nursing Home Transfer and Discharge Notification Waiver, MDH may be contacted by calling 651-201-4206 or emailing health.fpc-web@state.mn.us.

Minnesota Department of Health
Health Regulation Division
PO Box 64900
St. Paul, MN 55164-0900
www.health.state.mn.us

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To obtain this information in a different format, call: 651-201-4101.