Involuntary Discharge Criteria Checklist

ARM 37.106.2805 DEFINITIONS: "Involuntary transfer or discharge" means the involuntary discharge of a resident from the licensed facility or the involuntary transfer of a resident to a bed outside of the licensed facility. The term does not include the transfer of a resident from one bed to another within the same licensed facility, or the temporary transfer or relocation of the resident outside the licensed facility for medical treatment.

If it becomes necessary to involuntarily discharge a resident, the following checklist can help ensure the process complies with the Administrative Rules of Montana (ARMs). Formal, written notice must include the criteria in this checklist.

Residents must be given a written 30 day notice when they are requested to move out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, or the resident for resident's legal representative when:

☐ the resident's needs exceed the level of ADL services the facility provides;

☐ the resident exhibits behavior or actions that repeatedly and substantially interfere with the rights, health, safety or well being of other residents and the facility has tried prudent and reasonable interventions;
**documentation of the interventions attempted by the facility shall become part of the resident's record;

☐ the resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express needs or summon assistance, except as permitted by ARM 37.106.2891 through 37.106.2898;

☐ the resident has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed in the assisted living environment;

☐ the resident has had a significant change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the assisted living facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the facility's level of service. Temporary absence for medical treatment is not considered a move out; or

☐ the resident has failed to pay charges after reasonable and appropriate notice.

****The formal, written, 30-day notice must contain one of the above reasons.**

The resident's 30 day written move out notice shall, at a minimum, include the following:

- ☐ the reason for transfer or discharge;
- ☐ the effective date of the transfer or discharge;
- ☐ the location to which the resident is to be transferred or discharged;
- ☐ a statement that the resident has the right to appeal the action to the department; and
- ☐ the name, address and telephone number of the state long term care ombudsman.

A resident may be involuntarily discharged in less than 30 days for the following reasons:

- ☐ if a resident has a medical emergency;
- ☐ the resident exhibits behavior that poses an immediate danger to self or others; or
- ☐ if the resident has not resided in the facility for 30 days.

****The formal, written notice (less than 30 days) must specify one of the above reasons.**

A resident has a right to a fair hearing to contest an involuntary transfer or discharge.

- A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953, within 30 days of notice of transfer or discharge.
- The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is not a party to such a proceeding, and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.
- Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325 and 37.5.334, and a resident shall be considered a claimant for purposes of these rules.
- The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.
- The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334.

If the involuntary discharge is due to facility closure, please provide as much notice as possible and notify the Licensure Bureau and Ombudsman program as soon as possible.

If you have further questions regarding involuntary discharge notices, please contact the Licensure Bureau at 406-444-2676.