

**V-TAGS & INTERPRETIVE GUIDANCE REGARDING PATIENT INVOLUNTARY DISCHARGE  
CMS End Stage Renal Disease (ESRD) Program Interim Final Version Interpretive Guidance Version 1.1**

| TAG NUMBER                       | REGULATION  | INTERPRETIVE GUIDANCE  |
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| <p>V468<br/>(Patient Rights)</p> | <p>(b) <i>Standard: Right to be informed regarding the facility’s discharge and transfer policies.</i></p> <p>The patient has the right to –</p> <p>(1) Be informed of the facility’s policies for transfer, routine or involuntary discharge, and discontinuation of services to patients; and</p>     | <p>Patients must be given information about the facility policies for routine and involuntary discharges.</p> <p>Refer to the Condition for Governance at V766-V767 for involuntary discharge or transfer regulations and guidance, including acceptable reasons for involuntary discharge. Use those tags for failure to follow the involuntary discharge procedures. Use this tag for failure to inform patients about the transfer and discharge policies.</p>  |
| <p>V469<br/>(Patient Rights)</p> | <p>(2) Receive written notice 30 days in advance of an involuntary discharge, after the facility follows the involuntary discharge procedures described in § 494.180(f)(4). In the case of immediate threats to the health and safety of others, an abbreviated discharge procedure may be allowed.</p> | <p>The involuntary discharge procedures described at V767 identify the steps that a facility must follow prior to the involuntary discharge of a disruptive and abusive patient. After following the required procedures, a facility must give at least 30-days prior notice to any patient whom they opt to discharge involuntarily, except in the case of a patient who makes severe and immediate threats to the health and safety of others. An "immediate threat to the health and safety of others" is considered to be a threat of physical harm. For example, if a patient has a gun or a knife or is making credible threats of physical harm, this can be considered an "immediate threat." Verbal abuse is not considered to be an immediate threat. In instances of an immediate threat, facility staff may utilize "abbreviated" involuntary discharge or transfer procedures. These abbreviated procedures may include taking immediate protective actions, such as calling "911" and asking for police assistance. In this scenario, advance notice is not possible or required and there may not be time or opportunity for reassessment, intervention, or contact with another facility for possible transfer, as outlined at V767.</p> |
| <p>V716</p>                      | <p>(ii) The interdisciplinary team adheres to the discharge and transfer policies and procedures specified in § 494.180(f).</p>   | <p>The medical director must monitor and review each involuntary patient discharge to ensure that the facility interdisciplinary team follows the discharge and transfer policies and completes the steps required under the</p>   |

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| (Responsibilities of the Medical Director) |  | <p>Condition for Governance at V766 and V767.</p> <p>The records of any patients who have been involuntarily discharged must show evidence of compliance with each of the requirements detailed at V767, including evidence that the medical director as well as the patient’s attending physician, signed the order for involuntary discharge.</p>   |
| V766<br>(Governance)                       | <p><i>(f) Standard: Involuntary discharge and transfer policies and procedures.</i></p> <p>The governing body must ensure that all staff follow the facility’s patient discharge and transfer policies and procedures.</p> <p>The medical director ensures that no patient is discharged or transferred from the facility unless –</p> <ul style="list-style-type: none"> <li>(1) The patient or payer no longer reimburses the facility for the ordered services;</li> <li>(2) The facility ceases to operate;</li> </ul> <p>The transfer is necessary for the patient’s welfare because the facility can no longer meet the patient’s documented medical needs; or</p> | <p>Involuntary discharge or transfer should be rare and preceded by demonstrated effort on the part of the interdisciplinary team to address the problem in a mutually beneficial way. The facility must have and follow written policies and procedures for involuntary discharge and transfer.</p> <p>If any patients have been involuntarily discharged or transferred since the latter of either the effective date of these rules (October 14, 2008) or the facility’s last survey, surveyors will review those patients’ medical records to ensure compliance with these regulations and facility policy. See also requirements under Conditions for Patients’ rights at V468 and V469.</p> <p>The medical director must be informed of and approve any involuntary discharge or transfer of a patient. A facility may involuntarily discharge or transfer a patient only for those reasons listed here and at V767. The medical director must ensure that the reasons for any involuntary discharge or transfer are consistent with this requirement.</p> <p>If a facility involuntarily discharges or transfers a patient for nonpayment of fees, there must be evidence in the patient’s medical record that the facility staff (e.g., billing personnel, financial counselor, social worker) made good faith efforts to help the patient resolve nonpayment issues.</p> <p>In the event a facility ceases to operate, the governing body must notify CMS, the State survey agency, and the applicable ESRD Network. The facility’s interdisciplinary team must assist patients to obtain dialysis in other facilities.</p> <p>If the discharge or transfer is necessary for the patient’s welfare, the patient’s medical record must include documentation of the medical need and reasons why the facility can no longer meet that need.</p> |

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| <p>V767<br/>(Governance)</p> | <p>(4) The facility has reassessed the patient and determined that the patient’s behavior is disruptive and abusive to the extent that the delivery of care to the patient or the ability of the facility to operate effectively is seriously impaired, in which case the medical director ensures that the patient’s interdisciplinary team—</p> <p>(i) Documents the reassessments, ongoing problems(s), and efforts made to resolve the problem(s), and enters this documentation into the patient’s medical record;</p> <p>(ii) Provides the patient and the local ESRD Network with a 30-day notice of the planned discharge;</p> <p>(iii) Obtains a written physician’s order that must be signed by both the medical director and the patient’s attending physician concurring with the patient’s discharge or transfer from the facility;</p> <p>(iv) Visits another facility, attempts to place the patient there, and documents that effort; and</p> <p>(v) Notifies the State survey agency of the involuntary transfer or discharge.</p> | <p>Patients should not be discharged for failure to comply with facility policy unless the violation adversely affects clinic operations (e.g., violating facility rules for eating during dialysis should not warrant involuntary discharge). Patients should not be discharged for shortened or missed treatments unless this behavior has a significant adverse effect on other patients’ treatment schedules. A facility may evaluate the patient (who shortens or misses treatments) for any psychosocial factors that may contribute to shortening or missing treatments; for home dialysis; or, as a last resort to avoid inconveniencing other patients, may alter the patient’s treatment schedule or shorten treatment times for patients who persistently arrive late. Patients should not be discharged for failure to reach facility-set goals for clinical outcomes. Facilities are not penalized if a patient or patients do not reach the expected targets if the plan of care developed by the IDT is individualized, addresses barriers to meeting the targets, and has been implemented and revised as indicated.</p> <p>In the event facility staff members believe the patient may have to be involuntarily discharged, the interdisciplinary team must reassess the patient with an intent to identify any potential action or plan that could prevent the need to discharge or transfer the patient involuntarily. The reassessment must focus on identifying the root causes of the disruptive or abusive behavior and result in a plan of care aimed at addressing those causes and resolving unacceptable behavior.</p> <p>Evidence must be on file to substantiate that the patient received notification at least 30 days prior to involuntary discharge or transfer and that the ESRD Network was also notified at that time. While the early notice to the State agency is not required, facilities may choose to notify the patient, Network and the State agency at the same time. A 30-day notice is not required in the case of imminent severe threat to safety of other patients or staff. The State agency and Network would need to be notified immediately if the use of the abbreviated involuntary discharge procedure is necessary.</p> <p>There must be a written order in the patient’s medical record, signed by the</p> |

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|            | <p>(5) In the case of immediate severe threats to the health and safety of others, the facility may utilize an abbreviated involuntary discharge procedure</p> | <p>attending physician and the medical director for the facility to involuntarily discharge or transfer a patient. If the reason for discharge is the physician's determination to no longer care for a particular patient and there is no other physician on staff available or willing to accept the patient, generally the state practice boards for physicians require the patient be given some notice to avoid a charge of patient abandonment. The facility would need to follow this regulation as to reassessment, 30-day notice, attempts for placement, etc. during the physician's period of notice to the patient.</p> <p>Because the goal of contacting another dialysis facility is for continuity of care, the HIPAA privacy rule does not require patient consent to contact that other dialysis facility. However, it does limit sharing of protected health information to medical records requested by the other provider and prohibits sharing information obtained through hearsay.</p> <p>Good faith efforts should be made to find the closest facility to the patient's residence that will accept the patient in transfer. The applicable patient's medical record must include evidence of those placement efforts.</p> <p>An "immediate severe threat" is considered to be a threat of physical harm. For example, if a patient has a gun or a knife or is making credible threats of physical harm, this would be considered an "immediate severe threat." An angry verbal outburst or verbal abuse is not considered to be an immediate severe threat. In instances of an immediate severe threat, facility staff may utilize "abbreviated" involuntary discharge or transfer procedures. These abbreviated procedures may include taking immediate protective actions, such as calling "911" and asking for police assistance. In this scenario, there may not be time or opportunity for reassessment, intervention, or contact with another facility for possible transfer. After the emergency is addressed and staff and other patients are safe, staff must notify the patient's physician and the medical director of these events, notify the State agency and ESRD Network of the involuntary discharge, and document this contact and the exact nature of the "immediate severe</p> |

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|            |            | <p>threat” in the applicable patient’s medical record.</p> <p>At the time of publication of these rules, each facility had received a copy of an interactive program developed by the ESRD Networks on Decreasing Dialysis Patient Provider Conflict (DPC) that addresses proactive techniques to resolve such issues before progression to involuntary discharge.</p> |

Excerpted from the CMS ESRD Surveyor Training Interpretive Guidance (version 1.1) available at [www.cms.gov/Medicare/ProviderEnrollment-and-Certification/GuidanceforLawsAndRegulations/Dialysis.html](http://www.cms.gov/Medicare/ProviderEnrollment-and-Certification/GuidanceforLawsAndRegulations/Dialysis.html)

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