Steps for Involuntary Discharge

**Assisted Living**

# Determine which of the following permissible reasons for involuntary discharge apply.

* Nonpayment of basic services in accordance with the resident agreement.
* The resident has failed to comply with a valid, signed resident agreement.
* The resident has as an acute physical illness which cannot be managed through medication or prescribed therapy.
* The resident has physical limitations that restrict mobility, which cannot be compensated for by available auxiliary aids or intermittent staff assistance.
* The resident has incontinence issues that cannot be managed by the resident or staff.
* The resident has a stage 3 or stage 4 pressure sore, does not have a terminal condition and is receiving continuing care from an external service provider.
* The resident is profoundly disoriented to time, person, and place with safety concerns that require a secure environment, and the assisted living residence does not provide a secure environment.
* The resident needs more services than can be routinely provided by the assisted living residence or an external service provider.
* The resident exhibits conduct that poses a danger to self or others, and the assisted living residence is unable to sufficiently address those issues through therapeutic approach.

**When a resident has demonstrated that he or she has become a danger to self or others**, complete the following additional immediate steps:

1. Take all appropriate measures necessary to protect other residents;
2. Reassess the resident to be discharged and revise his or her care plan to identify the resident’s current needs and what services the assisted living residence will provide to meet those needs; and
3. Ensure all staff are aware of any new directives placed in the care plan and are properly trained to provide supervision and actions consistent with the care plan.

# Substantiate the reason for discharge with documentation.

* Practitioner assessment, including Behavioral Health Provider (e.g. Comprehensive Assessment)

NOTE: If the involuntary discharge is initiated due to a medical or physical condition resulting in a required level of care that cannot be treated with medication or services routinely provided by the residence’s staff or an external service provider, the written notice must also include an assessment by the resident’s applicable health-care or behavioral health provider of the resident’s current needs in relation to the resident’s medical and physical condition.

* Care Plan, including progression of changes
* Other pertinent medical, behavioral health, or billing documentation (e.g. medication lists, nurse notes, letters, emails, phone call logs)
* Resident Agreement with signature, if applicable
* Initial pre-admission assessment to establish change of care needs, if applicable
* Documentation of efforts to meet increased care needs that eventually led to discharge (e.g. care plan updates, staffing changes, addition of external services, family involvement) – Demonstrate timeline of events to show progression of efforts.
* Documentation of communication with resident and/or responsible party regarding reasons leading to discharge and cooperative approaches to avoid the discharge outcome

# Discharge Process

* Prior to discharging a resident because of increased care needs, the assisted living residence shall make documented efforts to meet those needs through other means.
* Coordinate an involuntary discharge with the resident, the resident’s legal representative and/or the appropriate agency.
* In the event a resident is transferred to another health care entity for additional care, arrange to evaluate the resident prior to re-admission or discharge the resident in accordance with the discharge procedures specified below.

# Provide Written Notice

### Timeframe

Provide written notice of any discharge **30 calendar days in advance of discharge**.

**In cases in which the resident requires a level of care that cannot be met by the residence or the resident has demonstrated that they are a danger to themselves or others**, whereupon the assisted living residence shall provide written notification with as much advance notice as is reasonable under the circumstances prior to the removal from the residence.

### Provided copies of the notice to:

* + - The resident,
    - The resident’s legal representative, and
    - Any relative or other person the resident has designated to receive notice of a discharge, as listed on the resident’s face sheet.
    - State and Local Ombudsman (within 5 days of resident notification)
    - CDPHE at [cdphe\_legalservices@state.co.us](mailto:cdphe_legalservices@state.co.us)

### Written notice of involuntary discharge must include the following:

* A detailed explanation of the reason or reasons for the discharge, including, at a minimum:

1. Facts and evidence supporting each reason given by the residence, and
2. A recounting of events leading to the involuntary discharge, including interactions with the resident over a period of time prior to the notice and actions taken to avoid discharge, specifying the timing of the events and actions.

* Statements conveying the following information:

1. That the individual receiving the notice has the right to file a grievance with the residence challenging the involuntary discharge within 14 days of the written notice, regardless of whether the resident has already been removed from the assisted living residence,

(2) That if a grievance is filed, the assisted living residence must provide a response to the grievance within five business days, and (3) If the resident or person filing the grievance is dissatisfied with the response, that the resident or person filing the grievance may appeal to the executive director of the Colorado Department of Public Health and Environment or their designee.

* Names and contact information, including phone numbers, physical addresses, and email addresses, for the state long-term care ombudsman, the designated local ombudsman, and the Colorado Department of Public Health and Environment.
* If the involuntary discharge is initiated due to a medical or physical condition resulting in a required level of care that cannot be treated with medication or services routinely provided by the residence’s staff or an external service provider, the notice must also include an assessment by the resident’s applicable health-care or behavioral health provider of the resident’s current needs in relation to the resident’s medical and physical condition.

# Respond to Grievance/Appeal

* **Designate an individual** to receive involuntary discharge grievances.
* Any of the persons the assisted living residence is required to notify of the discharge has **14 days** to file a grievance challenging the involuntary discharge and/or reasons for the discharge with the individual designated.
* The assisted living must provide assistance in preparing and filing a grievance if requested and must not interfere in filing the grievance.
* **The appeal must be submitted either in writing, or orally** to the designated staff person of the assisted living residence.
  + In the case of an oral submission, the assisted living residence shall ensure the individual submitting the grievance retains proof of the oral submission through a witness or other evidence.
  + If the appeal is orally submitted and witnessed, the assisted living residence shall ensure that the resident or other person filing the grievance has the witness’s name and contact information, and shall keep that information as part of the grievance documentation.
* **The staff member designated by the assisted living residence will provide a written response no later than 5 business days after the submission of an appeal**.
  + Provide copies to the individuals required to receive notice, the state long-term care ombudsman, and the designated local ombudsman.
  + Provide an oral explanation of the written response to the resident and/or person filing the grievance, as appropriate.
  + The written response shall include the following statement regarding the filing of an appeal: *“If the resident, or other person that submitted this grievance is dissatisfied with this response, they may file an appeal to the executive director of the Colorado Department of Public Health and Environment within 5 business days after receiving this written response. The appeal must include the original grievance, the original notice of involuntary discharge and supporting documentation given to the resident as part of that notification, and any additional information or documentation.”*
  + Include in the response an acknowledgement that if the resident, the individual filing the grievance, or the assisted living residence is dissatisfied with the findings and recommendations of the Department related to an appeal, they may request a hearing conducted by the Department by email to [cdphe\_legalservices@state.co.us](mailto:cdphe_legalservices@state.co.us) within 5 business days after receiving this written response. The appeal must include the original grievance, the original notice of involuntary discharge and supporting documentation given to the resident as part of that notification, and any additional information or documentation.
* Ensure none of your staff are engaged in any punitive or retaliatory action against a resident due to the resident filing a grievance or appeal.
* Continue to assist with planning a discharge or transfer of the resident while the grievance or appeal to the Department is pending.
* If **all** of the following apply, the resident must be permitted to return:
  1. The stated reason for the involuntary discharge in the notice of involuntary discharge provided in accordance with Part 11.17 is nonpayment of monthly services or room and board,
  2. The assisted living residence discharged the resident on or after the 31st day after the written notice of involuntary discharge was provided to the resident, AND
  3. The resident substantially complied with payments due to the residence, as determined through the grievance and appeal process.