



# Health Facilities Association of Maryland

## Behavioral Management Implementation Guide

**September 29, 2004**

*These **Guidelines** were developed in consultation with the Office of Health Care Quality. The OHCQ supports these **Guidelines** used appropriately and in conjunction with medical, psycho-social and substance abuse supports, as a method to address the issues raised by residents with behavioral problems. If you make any changes to this document then you must seek clearance prior to implementation.*

# Guidelines For Resident Behavior Implementation Guide

## I. Introduction

The *Guidelines For Resident Behavior* were created to assist providers in their efforts to communicate to all residents the expectations regarding their behavior while residing in a long-term care facility. Any resident may exhibit problem behaviors, but the intent of the *Guidelines* is to address the volitional behaviors of those individuals who have the capacity to understand the consequences of their behaviors.<sup>1</sup>

Adequately addressing the issue of problem behaviors upon admission has become more relevant as the number of younger residents has increased in Maryland nursing homes. This younger population may have difficulties adapting to a traditional nursing home environment and often are admitted with behavioral problems related to substance abuse and dysfunctional personal relationships. This can lead to disruptive behaviors in the nursing home including verbal and physical abuse of other residents and staff as well as attempts to manipulate the staff and the medical system. Residents presenting with this combination of social, mental, and medical problems can present serious challenges to providers in their efforts to create a safe and secure environment for all residents of a nursing facility.

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## II. Application of Resident Rules

Any resident may present behavioral issues in a nursing facility; if the *Guidelines* are used in a facility, they should be part of the facility's routine admissions packet and should be reviewed with all new admissions. The Guidelines should be again reviewed with a resident as soon his/her plan of care indicates that the Guidelines will be implemented with the resident. They should also be addressed with all residents residing at the facility at the time of implementation. You should seek the signature of the resident and/or their responsible party as appropriate. A copy of the rules should be provided to the resident or their responsible party after review. In addition to the resident and the responsible party, it would be advisable to educate family members about this new tool and the facility's policy regarding its use. Facility staff should consider posting the *Guidelines* in conspicuous places throughout the facility.

A sample facility policy has been provided (**see appendix A**). The facility policy and procedure committee should review and approve this policy. It is important for staff to

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<sup>1</sup> **The capacity of a resident may change over the course of his/her stay in a nursing home. A nursing home must base its decision on whether behavior is volitional upon a reasonably current professional assessment of the resident's capacity.**

understand that at no time does the application of the *Guidelines* remove the obligation of appropriate care planning and documenting a resident's problems and needs. Staff may want to review the *Guidelines* annually at resident council and at family council meetings. It is important to note that the implementation of the *Guidelines* is not a substitute for discharge rules and regulations, but is a tool to effect behavioral change for which repeated violations may lead to discharge only when the violations meet the thresholds of federal and state laws and regulations.

It is important for facility staff to understand that this is a progressive process and each incident should be evaluated on a case by case basis. The *Guidelines* are designed to address behaviors in a way that allows staff to provide care to all residents in the facility.

The following steps should be taken when there is a violation of the *Guidelines*:

**Step 1:**

Notice of a **Violation of Guidelines for Resident Behavior** (see appendix B) and the consequences is given to the resident by the Social Worker or the Administrator. At no time should the **Notice of Violation of Guidelines for Resident Behavior** be used as a discharge notice.

**Step 2:**

The Social Worker should document the meeting and the resident's response. The resident should be permitted to include individuals of their choice to participate in this meeting.

**Step 3:**

The resident's care plan will be reassessed by appropriate professionals and team members and adjusted to reflect the most recent violation. The plan of care will also reflect any recommended interventions or supports by professionals or consultants including medical and psychiatric consultants. This may or may not result in an additional behavioral plan signed by the resident. If a Behavioral Management Plan is initiated, it should be developed under the guidance of trained professionals.

**Step 4:**

Nursing Home staff will assist the resident in complying with the *Guidelines*.

**Step 5:**

Nursing home staff will repeat steps 1- 4 as necessary to achieve desirable changes. Depending on the severity and seriousness of continued violations, it may be appropriate to initiate the discharge process under the rules and regulations governing discharge.

**Step 6:**

If the preceding measures have failed and undesirable behaviors persist and jeopardize the health and welfare of the resident or other residents in the facility, then proceed with the discharge process. (See Appendix C)

### **III. Potential Violations of Guidelines for Resident Behavior**

#### **1. Leave of Absence**

Any leave of absence beyond the boundaries of the facility must be authorized by the resident's attending physician, meet a payer's financial requirements pertaining to a leave of absence, and include staff notification. Standing or approvals may be appropriate for routine authorized absences. An unauthorized or inappropriate leave of absence may prevent the facility from providing appropriate care and should be viewed as a violation of these rules. The consequences of such violations should be determined through collaboration between clinical staff and the administration. Consequences should not be determined without the full support of administration.

#### **2. Visitors**

A resident has the right to have visitors. It is expected that nursing home staff will work through a variety of avenues to resolve any conflict involving a resident's visitors. This includes the involvement of social services and the ombudsman's office. A facility may place reasonable conditions upon visitor access under appropriate conditions regardless of the *Guidelines*. If a resident does not have control over a visitor's misbehavior, it would generally be inappropriate to initiate disciplinary steps with the resident under these Guidelines.

However, violations of the *Guidelines for Resident Behavior* may include incidents where the resident actively participates in a visitor's inappropriate behavior. This may include examples such as:

- Inviting a prostitute into the facility
- Creating a disruptive environment for other residents
- Participating in illegal drug or inappropriate drinking activities

In these cases, it would be appropriate to counsel the resident under the *Guidelines for Resident Behavior*.

#### **3. Violations That Could Lead To An Inspection**

It is expected that the inspections of residents for contraband will be a rare occurrence. In the event that there is a need for such actions, Administration and social services should make the final determination of the appropriateness of such actions. General inspections should never be used as support for justification to search everyone in the facility.

Examples of violations warranting an inspection include:

- Illegal drugs or drug paraphernalia
- Alcohol that is not permitted as part of the resident's plan of care
- Illegal weapons

#### **4. Violations That Could Lead To Drug Testing**

If there is a reasonable suspicion of illegal drug use or the resident's care or that of others is placed at risk or compromised, then drug testing may be warranted. Examples of violations which may result in drug testing include:

- Possession of illegal drugs or alcohol
- Possession of drug paraphernalia

The drug testing of a resident must be approved by the facility Administrator or his/her designee.

#### **IV. Training**

It is important that staff be appropriately trained on the *Guidelines for Resident Behavior* and its application. The extensiveness of the training will depend on the level of involvement each staff member has with the *Guidelines*. The most extensive training should occur with social services, department heads, and supervisory staff, however it will be important for all staff to be familiar with the resident rules.

## **Appendix A**

### **ADMINISTRATIVE POLICIES AND PROCEDURES**

#### **I. POLICY: GUIDELINES FOR RESIDENT BEHAVIOR**

*Guidelines for Resident Behavior* are established in order to ensure a safe environment for residents, staff and visitors, while assuring optimal care to our residents.

#### **II. PROCEDURES:**

A. *Guidelines for Resident Behavior* will be supplied to all residents, and/or their agents upon admission and explained in full. The resident or his/her agent and witness signatures are required. The Guidelines will be re-introduced to a resident /agent if a behavioral management plan is initiated or it is identified in the resident's Plan of Care.

B. Initial infraction of *Guidelines* will require the Social Worker/designee to review the rules with the resident. The Administrator of the facility, however, reserves the right to impose other remedies deemed appropriate pursuant to acknowledgement of *Guidelines*, #12, Non-Compliance. Social Worker/ designee will document relevant information in the resident's medical record.

C. Any infractions of *Guidelines for Resident Behavior* may generate a "Letter of Notification" from the Administrator outlining the course of action, pursuant to section 12, Acknowledgement of *Guidelines*.

D. There will be ongoing behavioral assessment of the resident and timely and appropriate interventions incorporated by the interdisciplinary care teams, into the resident's care plan when there is any significant problem(s) or change(s) in behavior(s) occurring as it relates to the *Guidelines for Resident Behavior*.

E. In the event of rules violations, the facility will follow its own policies and procedures for documenting and managing unusual occurrences or events.

F. All efforts to assist the resident in complying with the rules (e.g., Care Plans, consultations with specialists and professionals to rule out psychiatric or medical causes of the behaviors, behavioral plans, contracts, family meetings, etc.) will be documented by authorized staff in the Medical Record.

G. The facility Administrator will ensure that a notice is posted in the public entrance area of the center to advise visitors that their clothing, packages and containers may be inspected if the center has cause to believe that the individual to be inspected possesses illegal drugs, unauthorized liquor, or weapons. The notice should include that if the visitor refuses to consent to the inspection, the visitor may be asked to leave the center and its premises.

**Appendix B**

**Notice of Violation of Guidelines or Resident Behavior**

Date: \_\_\_\_\_

Dear (resident's name):

It has been observed and documented that you \_\_\_\_\_ (describe what occurred, when it occurred, the names of the individuals involved and how it compromised the resident's health care and/or safety and that of other residents).

This conduct is a violation of the facility's *Guidelines for Resident Behavior* that you agreed to abide by and follow upon admission to \_\_\_\_\_ (name of Facility). As your signed acknowledgement of the *Guidelines* states, failure to comply with the *Guidelines* may result in Administrative Actions being taken against you, including, but not limited to: \_\_\_\_\_ [e.g., requirement to enter into a behavioral plan; counseling by social work staff; prohibition on certain visitors or supervised visitation with certain visitors] (include facility and resident specific remedies).

The conduct identified above violates \_\_\_\_\_ (name of facility's *Guidelines for Resident Behavior* and, as a consequence, the Facility is taking the following administrative action:

\_\_\_\_\_ (describe the administrative action.)

Should you choose to continue to violate the *Guidelines for Resident Behavior* or the conditions placed upon you through the above identified administrative action, you will be notified of additional administrative actions that may include, but are not necessarily limited to, discharge from the facility under circumstances meeting federal and state conditions for involuntary discharge.

We are committed to providing you and your fellow residents with high quality care and services. We are also committed to ensuring a safe environment for all of our residents, staff and neighbors. Your cooperation and assistance in providing a safe environment for everyone is required.

Sincerely,

Administrator

- cc: Attending Physician
- Medical Director
- Social Worker
- Director of Nursing
- Resident's Representative

## Appendix C

# **SUMMARY OF DISCHARGE PROVISIONS**

## **REASONS FOR DISCHARGE**

A facility may not transfer or discharge a resident except for one of the following reasons:

- (1) A transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (2) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;
- (3) The health or safety of an individual in a facility is endangered;
- (4) The resident has failed, after reasonable and appropriate notice to pay for, or under Medicare or Medicaid or otherwise to have paid for, a stay at the facility; or
- (5) The facility ceases to operate.

## **NOTICE OF DISCHARGE**

Facilities generally must provide the resident with written notice of any proposed discharge or transfer and the opportunity for mediation and/or a hearing before the proposed discharge or transfer. The discharge/transfer notice must be on a standard form, provided by the Department of Health and Mental Hygiene, that includes:

- (1) Notice of the intended discharge or transfer of the resident;
- (2) Each reason for the discharge or transfer;
- (3) The right of the resident to request a hearing and/or mediation;
- (4) The right of the resident to consult with any lawyer the resident chooses;
- (5) The availability of the services of the Legal Aid Bureau, the Older American Act Senior Legal Assistance Programs, and other agencies that may provide assistance to individuals who need legal counsel;
- (6) The availability of the Department of Aging and local Office on Aging Long-Term Care Ombudsman to assist with resident; and
- (7) The provisions of section § 19-345.1 of the Maryland Code, Health General Article.

At least 30 days before the facility involuntarily discharges a resident, the facility must:

- (1) Provide to the resident the written notice outlined above; and
- (2) Provide the written notice to:

- (i) The next of kin, guardian, or any other individual known to have acted as the individual's representative, if any;
- (ii) The Long-Term Care Ombudsman; and
- (iii) The Department of Health and Mental Hygiene, Office of Health Care Quality.

The facility must provide the resident with an opportunity for mediation and/or a hearing on the proposed transfer or discharge.

### **EXCEPTION FOR RESIDENTS IN THE FACILITY FOR FEWER THAN 30 DAYS**

The above provisions requiring (1) 30 days advance written notice prior to a transfer or discharge and (2) an opportunity for a hearing before the transfer or discharge of a resident **DO NOT** apply if:

- (i) An emergency exists and health or safety of the resident or other residents would be placed in imminent and serious jeopardy if the resident were not transferred or discharged from the facility as soon as possible; or
- (ii) The resident has not resided in the facility for 30 days.

However, if the facility discharges or transfers a resident under either of these provisions, the facility must still provide written notice of the proposed discharge or transfer as soon as possible.

### **PROCEDURES FOR EFFECTING DISCHARGE**

- (a) Requirements – In addition to the provisions of §§ 19-345 and 19-345.1 of this subtitle, a facility may not involuntarily discharge or transfer a resident unless, within 48 hours before discharge or transfer, the facility has:
  - (1) Provided or obtained:
    - (i) A comprehensive medical assessment and evaluation of the resident, including a physical examination, that is documented in the resident's medical records;
    - (ii) A post discharge plan of care for the resident that is developed, if possible, with the participation of the resident's next of kin, guardian, or legal representative; and
    - (iii) Written documentation from the resident's attending physician indicating that the transfer or discharge is in accordance with the post discharge plan of care and is not contraindicated by the resident's medical condition; and

- (2) Provided information to the resident concerning the resident's rights to make decisions concerning health care including:
  - (i) The right to accept or refuse medical treatment;
  - (ii) The right to make an advance directive, including the right to make a living will and the right to appoint an agent to make health care decision; and
  - (iii) The right to revoke an advance directive.
  
- (b) Resident's information – Except as provided below in section (c) (3), at the time of transfer or discharge, the facility must provide the resident or the resident's next of kin, guardian, or legal representative with;
  - (1) A written statement of the medical assessment and evaluation of post discharge plan of care;
  - (2) A written statement itemizing the medications currently being taken by the resident;
  - (3) To the extent permitted under State and federal law, at least a 3-day supply of the medications currently being taken by the resident;
  - (4) The information necessary to assist the resident, the resident's next of kin, or legal representative in obtaining additional prescriptions for necessary medication through consultation with the resident's treating physician; and
  - (5) A written statement containing the date, time, method, mode and destination of discharge.
  
- (c) Written consent to discharge. – (1) Except as provided in paragraph (2) and (3) below, a facility may not discharge or transfer a resident unless the resident is capable of and has consented in writing to the discharge or transfer.
  - (2) A facility may discharge or transfer a resident without obtaining the written consent of the resident if the discharge or transfer:
    - (i) Is in accordance with a post discharge plan of care; and
    - (ii) Is to a safe and secure environment where the resident will be under the care of:
      - 1. Another licensed, certified, or registered care provider; or
      - 2. Another person who has agreed in writing to provide a safe and secure environment.

- (3) A facility that is certified as a continuing care provider under Article 70B of the Code is not subject to section (b) of this section if:
  - (i) The facility transfers a resident to a lesser level of care within the same facility in accordance with a contractual agreement between the facility and the resident; and
  - (ii) The transfer is approved by the attending physician.
  
- (d) Discharge planning process. – If the requirements of Health General Article §§ 19-345 and 19-345.1 and sections (a) and (b) of this section have been met, the resident’s next of kin or legal representative shall cooperate and assist in the discharge planning process, including:
  - (1) Contacting, cooperating with, and assisting other facilities considering admitting the resident; and
  - (2) Cooperating with governmental agencies, including applying for medical assistance for the resident.
  
- (e) Attorney General. – If requested by any person during the process of transferring or discharging a resident or on its own initiative, the Office of the Attorney General may investigate whether an abuse of funds under Health General Article § 19-346 contributed to the decision to transfer or discharge the resident and may make appropriate referrals of the matter to other government agencies.

# Acknowledgements

## HFAM's Behavioral Management Workgroup

**Paul Bach – Chairperson**

Sr. Vice President of Operations  
Genesis HealthCare

**Charles Ritchey**

Administrator - Blue Point Nursing and Rehab  
Xavier Health Care Services

**Howard Sollins**

Attorney at Law  
Ober, Kaler, Grimes & Shriver

**Timothy Engelhardt**

Office of Health Services  
DHMH/Medicaid

**Patricia Bayliss**

State Ombudsman  
Maryland Office on Aging

**Paul Ballard**

Assistant Attorney General  
Office of Health Care Quality

**Matt Neiswanger**

Administrator  
St. Thomas More Nursing and Rehab

**JoAnne Knapp**

Emergency Preparedness  
Maryland Department of Disabilities

**Kim Burton**

Director Older Adult Programs  
Maryland Mental Health Association

**William Vaughan**

Chief Nurse  
Office of Health Care Quality

**Wendy Kronmiller**

Director of Federal Programs  
Office of Health Care Quality

**Mary Crellin**

QA Director  
Cherry Lane Nursing Center

**Michele Douglas**

State Public Policy Director  
Alzheimer's Association

**Tom Merrick**

Policy Analyst  
Maryland Department of Disabilities

**Laura Katz**

Attorney at Law  
Saul Ewing

**Margie Heald**

Program Manager  
Office of Health Care Quality

## Subcommittee Participants

**Cesare Tapino**

Administrator  
Genesis HealthCare – Cromwell

**Carol Eckerl**

Clinical Specialist  
Genesis HealthCare

**Jim Warner**

VP of Operations  
University Specialty Hospital

**John Lessner**

Attorney at Law  
Ober, Kaler, Grimes, & Shriver

**LeeAnn Wheatley**

QA Surveyor  
Office of Health Care Quality

**Mark Koppelman**

Sachs, Trotta, Koppelman

**John Fuller**

Police & Correctional Services  
Training Commissions

**Sandra Sanders**

VP of Clinical Services  
Xavier Health Care Services