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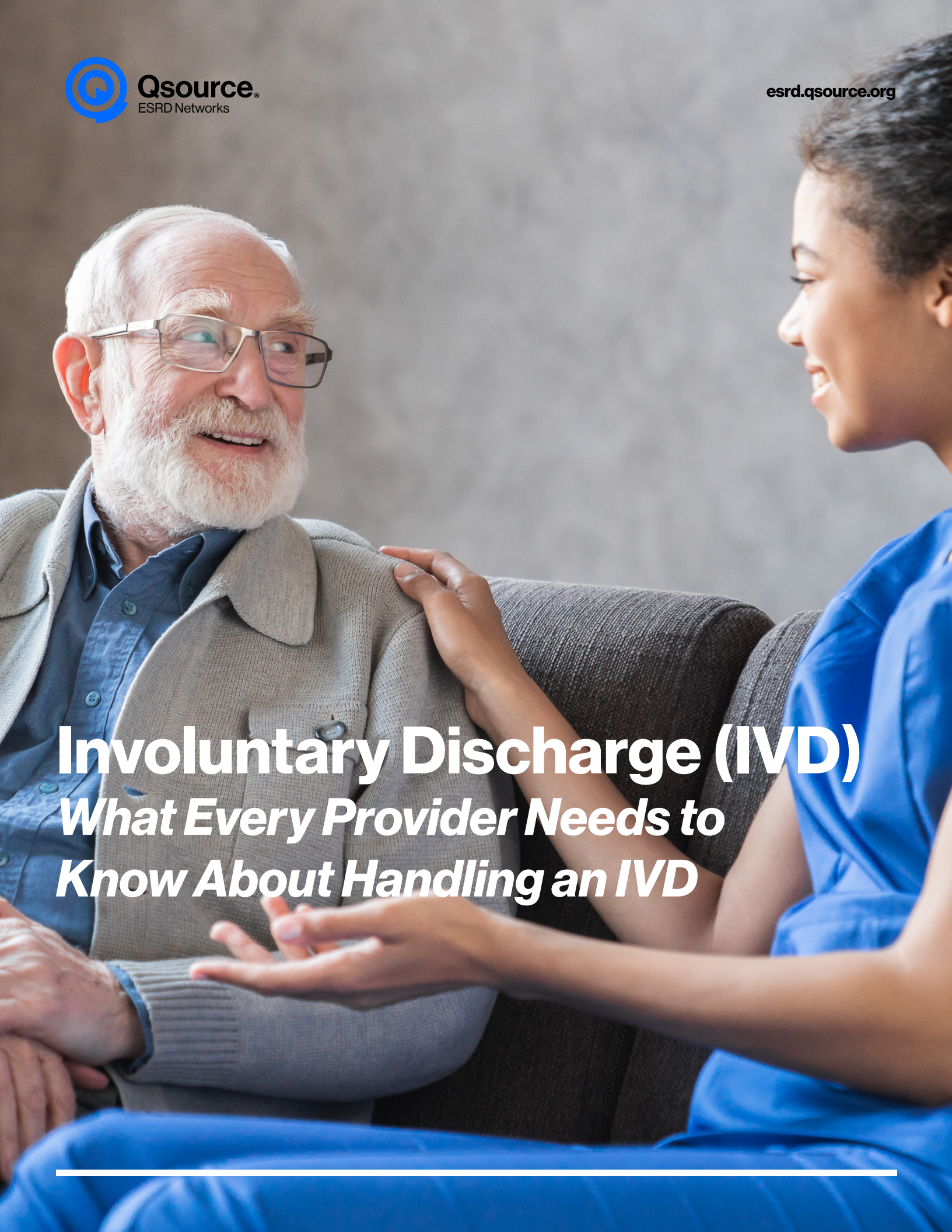

Involuntary Discharge (IVD)

What Every Provider Needs to Know About Handling an IVD

IVD and the Provider

Overview

Medical directors set the stage and clinic attitude around patient retention and tolerance for sub-optimal behaviors, and while they do not hold direct responsibility for grievances, grievances should be reviewed in Quality Assessment and Performance Improvement (QAPI) meetings. Many grievances are based on professionalism of facility staff. Thus, the medical director should reinforce the importance of clear interpersonal boundaries and education on these topics during new employee orientation and staff training. Physicians need to have a clear understanding of the IVD policy and ensure that staff clearly understand that patients cannot be immediately discharged for non-adherence.

The Centers for Medicare & Medicaid Services (CMS) understands that patients can exhibit challenging behaviors; that there will be patients in your facility who are chronically challenging in attitude, manner, and adherence to prescribed treatment, as well as patients who experience symptoms of either managed or unmanaged mental illness. CMS, the Network, and other regulatory agencies recognize the difficulties posed by these patients and do not expect them to behave within the norm. The expectation is that the clinics meet patients' needs by individualizing plans of care and interactions in an attempt to create successful outcomes for all patients, including those with behavioral challenges. Patients who are terminated by one nephrologist in a practice must be screened and assessed for care provision by other nephrologists in the practice. Should those attempts fail, the medical director is responsible for making a good faith attempt to place a patient in another facility; discharging a patient from a facility for any reason other than the reasons listed in V766 potentially violates the regulation.

Notes: Failure to comply with policies relating to IVD is considered a Condition-level deficiency. All attempts to assist a patient with his or her behavior by the facility, in adjusting expectations, care, and interactions due to a patient's issues, must be documented in the patient's medical record. This documentation provides an important review of events leading up to IVD consideration and serves a reference when questions arise.

Conditions for Coverage (CfCs)

The CfCs are clear about facility responsibility to ensure that staff develop and use appropriate skills to manage challenging patient situations in the dialysis clinic. The CfCs also specify the parameters for an IVD. See more on the CfCs in Excerpts from the CfCs at the end of this document.

Notify the Network Prior to an IVD

In the unlikely event that your facility is faced with considering the IVD of a patient, the facility must abide by the Network and regulatory requirements. Make sure all efforts to avert the IVD are documented in the patient's medical record. Contact the ESRD Network Patient Services Department regarding the issuance of a 30-day notice or immediate IVD. The process for IVD will then be as follows:

- The Network requires a 30-day notification prior to the IVD of any patient. The Network Patient Services Department must review the:
  - Issue(s) with facility staff.
  - Reassessments.
  - Ongoing problem(s).
  - Efforts made to resolve the problem(s).
- The Network Patient Services Department and facility staff determine if other actions might be taken to prevent the IVD.
- Facility staff must thoroughly document the patient's behavior, including:
  - Steps taken to assist the patient in addressing and modifying the problematic behavior. – Referral assistance provided, and outcomes of those referrals, including documentation:
  - Of conflict management steps taken by the staff to address any disruptive patient situations.
  - Indicating the patent was informed of the Network's Grievance Procedure and was provided the patient toll-free number.
- Any patient considered at-risk for IVD or involuntary transfer (IVT) must be considered "unstable," triggering a comprehensive internal interdisciplinary team (IDT) patient reassessment due to "significant change in psychosocial needs."

Note: V767 requires that patients at risk for IVD be reassessed by the renal team: "Significant change in psychosocial needs" would include any event that interferes with the patient's ability to follow aspects of the treatment plan.

Network staff will be looking to identify compliance to this IVD policy in your documentation, including examples of:

- Use of the Decreasing Dialysis Patient-Provider Conflict Provider Manual and the updated 2022 addendum, a great resource for steps that can be easily implemented by a facility to deal with challenging patients.
- Staff maintaining professionalism at all times.
- Establishing a systematic approach to working with/accommodating the patient's needs.
- Ensuring meeting dates, times, and attendance, as well as discussions are documented in the medical record.
- Communicating boundaries of non-acceptable and acceptable behavior with patients.
- Communicating with/listening to the patient to determine the issue(s).
- Collaborating and identifying appropriate interventions with the patient.

- Establishing and defining who will be responsible for follow-up.
- Determining follow up guidelines and dates.
- Working with the patient to avoid IVD.
- Initiating a care meeting with the renal team to discuss the patient's behavior and establishing a revised plan of care (PoC).
    - Inviting the patient's family and/or caregiver.

Ensure Your Documentation is Complete

The Network will ask to see your documentation when you notify us of a pending IVD. Our request may include but may not be limited to:

- Initial problem assessment and PoC addressing interventions/goals.
- Patient response to interventions.
- Reassessment and new or modified interventions/goals.
- Behavior contract, if implemented.
    - Contact the Patient Services Department for assistance with behavior contracts.
- If discharge is for nonpayment, documentation of assistance provided to link patient with potential payment source.
- Discharge notification letter to patient.
- Discharge order signed by attending physician and medical director.
- Documentation of contacting another facility for placement.
- Disposition at time of discharge (one of the following):
    - Transfer to new chronic facility.
    - If no chronic facility accepts patient, documentation that patient was given acute care resources.
- Documentation that your state survey agency has been informed of the IVD.

Report IVDs to the Network Directly

Any discharge or transfer of a patient who has not requested such action is to be reported to the Network as an IVD or IVT regardless of whether or not the patient was transferred to another dialysis facility. While there is a mechanism in EQRS (formerly CROWNWeb) for this reporting, each facility is responsible for reporting the reason for discharge/transfer directly to the Network.

IVD Should be the Option of Last Resort

All efforts and options must be exhausted to prevent IVDs from occurring. CMS regulations need to be followed on allowable discharges (see reference: CMS Regulations).

- Advance notice to an IVD patient must be given to ensure orderly transfer or discharge.
    - Under most circumstances, CMS interprets orderly transfer or discharge to require a 30-day

notice and active staff assistance in locating a new facility.

- The patient will not be discharged without notice and/or without receiving assistance in securing another unit, except in cases involving physical assault, or when the patient is considered a serious threat to the safety and security of staff or other patients.
  - If an immediate termination of services is necessary to maintain a safe environment, the patient will be:
    - Notified by certified letter.
    - Given a list of facilities in the area.
    - Notified of area hospitals that may provide emergency dialysis care.
- Active assistance (contacts made for the identification of available treatment space at facilities in the local geographic area, referral of patient and transmission of required medical records) for patients who have had immediate termination of services will still be provided through telephone, fax, and community/facility/large dialysis organization standards of process for placement.
- If chronic placement is not obtained, the discharging physician and facility will work with area providers to ensure continued treatment.
  - The practice of "banning" a patient within a chain of providers is prohibited. Each provider must review patient records and determine if they will accept. One provider physician MAY NOT make the decision for ALL physicians.
- All discharge activities are documented in the patient's records.

Notify the State Survey Agency

- It is a facility's responsibility to notify the State Survey Agency of all IVDs/IVTs.
- Documentation should include the:
  - Date of the IVD/IVT.
  - Time of the IVD/IVT.
  - Name of the individual to whom the IVD/IVT was reported.

State Notification of Involuntary Discharge/Transfer

Date: _____

Department of Health Services Licensing and Certification State Office: _____

Attention (ESRD Supervisor): _____ Fax Number: _____

Facility CCN: _____ Facility Name: _____

Name of individual making the report: _____

Event: ☐ Involuntary Discharge (IVD) ☐ Involuntary Transfer (IVT)

Patient Name: _____ DOB:

Date of Discharge/Transfer (patient's last date of treatment): _____

Reason for IVD or IVT:

Was the network notified? ☐ Yes ☐ No

Date Network Notified: _____ Network Staff Notified: _____

For additional information you may contact the above stated Network staff at:
Network 16: 317-257-8265, option 1 | **Network 17:** 816-880-9990, option 1

Items Attached:

☐ IVD/IVT Notice Given to Patient

☐ Medical Director and Attending Nephrologist written Discharge Order

Excerpts from the CfCs (for Reference)

V-Tags & Interpretive Guidance Regarding Patient Involuntary Discharge

Tag Number	Regulation	Interpretive Guidance
V468 (Patient Rights)	*(b) Standard: Right to be informed regarding the facility's discharge and transfer policies.* The patient has the right to: (1) Be informed of the facility's policies for transfer, routine or involuntary discharge, and discontinuation of services to patients; and	Patients must be given information about the facility policies for routine and involuntary discharges. 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.
V469 (Patient Rights)	(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.	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.
V716 (Responsibilities of the Medical Director)	(ii) The interdisciplinary team adheres to the discharge and transfer policies and procedures specified in §494.180(f).	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 Condition for Governance at V766 and V767. 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.

Tag Number	Regulation	Interpretive Guidance
V766 (Governance)	*(f) Standard: Involuntary discharge and transfer policies and procedures.* The governing body must ensure that all staff follow the facility's patient discharge and transfer policies and procedures. The medical director ensures that no patient is discharged or transferred from the facility unless: 1. The patient or payer no longer reimburses the facility for the ordered services; 2. The facility ceases to operate; The transfer is necessary for the patient's welfare because the facility can no longer meet the patient's documented medical needs.	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. 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. 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. 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. 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. 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.

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V767 (Governance)	(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— (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; (ii)Provides the patient and the local ESRD Network with a 30-day notice of the planned discharge; (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; (iv)cts another facility, attempts to place the patient there, and documents that effort; and (v)Notifies the State survey agency of the involuntary transfer or discharge. (5) In the case of immediate severe threats to the health and safety of others, the facility may utilize an abbreviated involuntary discharge procedure.	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. 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. 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. There must be a written order in the patient's medical record, signed by the 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

Tag Number	Regulation	Interpretive Guidance
V767 (Governance)		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. 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. 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. 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 threat" in the applicable patient's medical record. 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.

Excerpted from the CMS ESRD Surveyor Training Interpretive Guidance (version 1.1) available at https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/downloads/esrdpgmguidance.pdf.

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