



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

IMPORTANT MEMO

Date: August 29, 2014

To: Medicaid Nursing Facility (NF) Providers

From: Patti Killingsworth, Assistant Commissioner
Chief of Long Term Services and Supports (LTSS)

CC: TennCare Managed Care Organizations

Re: **Nursing Facility Discharge Requirements
Under the Doe Consent Decree**

The purpose of this memo is to remind you of certain requirements regarding discharge of residents who are seeking Medicaid reimbursement for NF services. These requirements are set forth in the *Doe v. Word* Consent Decree.

In accordance with Section 5(a)(2) of the *Doe v. Word* Consent Decree, whenever a current resident of such a nursing home has submitted a PAE for approval of Medicaid reimbursement for NF services, **the resident may not be discharged because TennCare initially denied the PAE application until any appeal is resolved or the time during which an appeal may be requested has passed without action.** This includes applicants denied for NF level of care, but approved to enroll in CHOICES Group 3 for HCBS.

When a PAE decision is made and documented in TPAES, a notice is generated and mailed to the applicant and to his or her designee (as applicable). This letter is viewable to PAE submitters in TPAES. If NF level of care is denied, the letter includes appeal rights and the time limit within which an appeal may be filed. The time limit for filing an appeal is 30 days plus mailing time. Mailing time includes five (5) days for receipt of the notice mailed by TennCare and may include an additional five (5) days when an applicant's appeal is mailed to TennCare. This means a total of 35-40 days may be allowed for an applicant to timely file a PAE appeal (40 days only when the appeal is mailed to TennCare).

To determine if an applicant has filed a PAE appeal with TennCare, a submitting NF can view the PAE appeal in TPAES. Detailed steps are as follows:

1. Locate the patient's PAE in TPAES and open it.
Go to the PAE Request Info Tab.
2. Under General Information, locate the "Current Status" field.
3. If the Current Status is indicated as "Appeal Pending," there is a pending PAE appeal for this applicant. In that case, the applicant may not be involuntarily discharged until such appeal has been resolved. This does not preclude the applicant from a voluntary discharge to avoid potential liability, since s/he will be financially responsible for NF services received unless the decision is overturned.

To determine if the time limit for filing an appeal has expired, the submitting NF can view the generated notice of adverse action in TPAES. Detailed steps are as follows:

1. Locate the patient's PAE in TPAES and open it.
Go to the PAE Related Items Generated Attachments Tab.
2. The letter date is next to the generated attachment listed; or
3. Click on the letter title or icon to view the letter which includes a date in the upper left.

When a PAE appeal is resolved, the Current Status is indicated in TPAES as follows:

- Appeal overturned pre judgment, this means the adverse action was overturned prior to hearing and NF level of care is approved.
- Appeal overturned by judgment, this means the adverse action was overturned as a result of the hearing and NF level of care is approved.
- Appeal upheld by judgment, this means the appeal was withdrawn or defaulted, or the adverse action was upheld as a result of the hearing and NF level of care is denied.

Once a NF has determined that an appeal has not been filed, and that the time limit for appealing a PAE with TennCare has expired, federally compliant discharge processes may continue. Federal requirements pertaining to NF Discharge and transfer processes can be found at 42 CFR 483.12. A copy of the *Doe v. Word* Order can be found on our website at <https://www.tn.gov/tenncare/legal.html>

To assist facilities in maintaining compliance with these requirements, a template discharge notice will be developed and posted on the TennCare website in the coming weeks. In addition, a voluntary discharge form will be developed that facilities can request a resident sign when s/he is voluntarily electing to transition to HCBS or otherwise discharge from the facility prior to the timely filing date of an appeal or resolution of an appeal.

Should you have questions regarding this memo or your obligations regarding discharge practices, you may call our LTSS Help Desk at 877-224-0219 between the hours of 8:00 AM and 4:30 PM CST.