FACT SHEET



# LEVEL OF CARE TRANSFER RIGHTS FOR RESIDENTS IN CCRCs

Continuing Care Retirement Communities (CCRCs) provide, usually on one campus, a continuum of care: independent living, assisted living, and nursing home care. Residents sometimes expect that they will be able to remain in their independent units, receive care there and not have to move to a higher level of care. The CCRC model generally is designed to meet higher level of care needs in specifically licensed environments, e.g., assisted living facility, specialized dementia care unit, or nursing home. Although the CCRC may provide some assisted living type services for a period of time in the independent units, the preferred delivery model is to move a resident to the designated higher level of care environment, thus freeing independent units. The difference between the resident's expectation to "age in place" and the provider's "aging in level of care model" can be the cause of misunderstandings and confusion.

The "Level of Care Transfer Process" offers some protections to residents. This consumer fact sheet clarifies the level of care transfer process and the rights of residents at each stage of the process.

> **TIP:** *The most important right to exercise is to request an assessment and then to exercise your rights to a Review of the level of care decision triggered by the assessment.* The process gives the resident the best chance to present medical evidence that the care needs can be met in the independent unit. Note: Since independent units in CCRCs are also licensed as residential care facilities, there might be options to receive assistance with activities of daily living as well as home health and hospice services depending on licensing approvals. (Refer to Fact Sheet, "What You Need to Know About Residential Care Facilities," http://canhr.org/factsheets/rcfe_fs/html/rcfe_needtoknow_fs.htm)

## Reasons for Level of Care Transfers (H&S 1788(a)(10)(A)(i)-(iv))

The CCRC provider may transfer a resident only under one or more of these four (4) conditions taking into account the appropriateness and necessity of the transfer and the goal of promoting resident independence:

- Resident is nonambulatory, i.e., unable to leave their unit in case of an emergency without the help of an assistive devise such as a walker and/or help of another person perhaps due to dementia. *Note: If the unit has a nonambulatory fire clearance, a transfer for this reason is not necessary;*
- Resident's physical or mental condition endangers the health, safety, or well-being of the resident or another person;
- Resident's condition or needs exceed that which may lawfully be provided in the independent living unit, e.g., prohibited health conditions such as stage 3 decubitus ulcers, use of feeding tube, etc. *Note: If the CCRC has a hospice waiver, there might be an exception to these prohibited health conditions; and/or*
- Resident's condition or needs require a higher level of care but the provider does not have the facilities to provide that level of care.

## Assessment Process (1788(a)(10)(B)(i))

The assessment process focuses on the health conditions and care needs of the resident that might require a higher level of care. The completed assessment and accompanying documentation form the basis for the transfer. *Note: The transfer process does not begin until a comprehensive assessment is performed.*

During the assessment process, the resident and his/her responsible person* have the following rights:

- Be involved in the assessment process;
- Invite others' involvement into the process such as family members, primary care doctor or other appropriate health care professionals;
- Receive an explanation of the assessment process, the assessment tools, if any, and criteria for evaluating and scoring; and
- Obtain a copy of the completed assessment upon request.

## LEVEL OF CARE TRANSFER PROCESS

Prior to any transfer, the resident has the right to participate in a transfer process that has five (5) distinct stages as described below. *Note:* Unless the resident or his/her responsible person requests a second care conference (Stage 3) or a review by the CCC Branch (Stage 4), the actual transfer (Stage 5) would take place after the notice of transfer (Stage 2).

1. **First Care Conference** (1788 (a)(10)(B)(ii)(iv))

   Before issuing the Notice of Transfer, the provider must conduct a care conference in order to explain the results of the assessment process and the reasons for the transfer. The resident and his/her responsible person have the following rights:

   - Participate in a care conference prior to being sent a Notice of Transfer;
   - Receive the reasons for the transfer in writing;
   - Invite family members and the resident's health care professionals. *Note: A resident who is cognitively aware can request that his/her responsible party not be involved in this care conference.*

2. **Notice of Transfer** (1788 (a)(10)(B)(iii)(v)(vi))

   The notice starts the 30-day pre-transfer period and must contain all of the following elements:

   - Be in writing;
   - State the reasons for the transfer;
   - Indicate the effective date of the transfer and the date the Notice was provided the resident and his/her responsible person;
   - Issue the Notice at least 30 days before the transfer is expected to occur. (*Note*: As an exception, the notice can be issued as soon as practicable if the health and safety of the resident or other residents is in danger, or the transfer is required by the resident's urgent medical needs;
   - Designate the level of care or location of the transfer;
   - State the resident's right to a review of the transfer decision at a second care conference, and indicate any reasonable time requirements for requesting a second care conference (e.g., within 20 days from the receipt of the Notice of Transfer); and
   - For disputed transfer decisions, the right to a review by the Continuing Care Contracts Branch, containing the name, address, and telephone number of the Branch.

   Continuing Care Contracts Branch
   California Department of Social Services
   744 P Street, M.S. 10-90
   Sacramento, CA 95814
   Tel. No.: (916) 657-2592

3. **Second Care Conference** *(Optional)* (1788 (a)(10)(C))

   The purpose of the second care conference is to review the transfer decision. This gives the resident the opportunity to provide new information or documentation. *Note:* Members of the provider's interdisciplinary team must attend this conference.

   The resident and his/her responsible person have the following rights:

   - Participate in the care conference review;
   - Invite family members, the resident's doctor, and health care professionals; and
   - Include the local Ombudsman upon the request of the resident, the resident's responsible person, or the provider.

4. **Review by Continuing Care Contracts Branch** *(Optional)* (1788 (a)(10)(D)(E))

   The CCC Branch review focuses only on whether the CCRC provider adhered to the assessment and transfer process procedures and submitted adequate documentation. It does not evaluate the medical or behavioral basis for the transfer as presented in the assessment. Because of the narrow procedural focus, the decisions are usually rendered quickly. The decision of the Branch must be in writing.

   Pending a decision by the CCC Branch, the provider may specify additional care and services in order for the resident to remain in his/her independent unit, and the resident may be required to pay for these additional services.

   If the Branch upholds the provider's decision to transfer, then the actual transfer occurs as set forth in the Notice of Transfer. If the Branch agrees with the resident, the transfer process must be repeated as specified by the written decision of the Branch. In some cases, the provider might drop, at least for the time being, the decision to pursue a level of care transfer.

5. **Actual Transfer** (1788 (a)(10)(B)(ii)(vii))

   Regardless of the proposed date for the transfer, the CCRC provider is responsible to provide the resident with sufficient preparation and orientation to ensure a safe and orderly transfer, and to minimize transfer trauma.

If a resident or responsible person is concerned about the fairness of this transfer process or is dissatisfied by the results, they may wish to seek legal counsel. Contact CANHR's Legal Referral Service (LRS, http://www.canhr.org/LRS/index.html): (800) 474-1116.

***** A "responsible person" means that individual or individuals, including a relative, health care surrogate decision maker (e.g. health care agent in a Power of Attorney for Health Care/Advance Directive), or placement agency who assist the resident in placement or who assume varying degrees of responsibility for the resident's well-being. (Title 22, Division 6, Section 87101(r)(6))