

## Transfer & Discharge Rights

Federal and California laws provide strong protections against evictions of nursing home residents. Residents have very specific rights that are intended to prevent inappropriate, unnecessary and untimely transfers and discharges.

**The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:**

1. It is necessary for the resident's welfare and the resident's needs cannot be met in the facility (42 CFR §483.15(c)(1)(i)(A));
2. The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility (42 CFR §483.15(c)(1)(i)(B));
3. The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident (42 CFR §483.15(c)(1)(i)(C));
4. The health of individuals in the facility would otherwise be endangered (42 CFR §483.15(c)(1)(i)(D));
5. The resident has failed, after reasonable and appropriate notice, to pay (42 CFR §483.15(c)(1)(i)(E));
6. The facility ceases to operate (42 CFR §483.15(c)(1)(i)(F)).

### Documentation

The facility must document the basis for the transfer in the resident's record. 42 CFR §483.15(c)(2). If the facility claims it cannot meet the resident's needs (reason 1 above), effective November 28, 2017, it must document the specific needs that cannot be met, its attempts to meet the needs, and the services available at the receiving facility to meet the resident's needs. 42 CFR §483.15(c)(2)(i)(A).

When a facility claims it cannot meet the resident's needs or the resident no longer needs its services (reasons 1 and 2 above), the resident's physician must provide the documentation. 42 CFR §483.15(c)(2)(ii)(A). Any physician can provide the documentation when the facility claims that the health or safety of individuals in the facility would be endangered (reasons 3 and 4 above). 42 CFR §483.15(c)(2)(ii)(B).

### Written Notice

Before transferring or discharging a resident, the facility must provide written notice to the resident and the resident's representative in a language and manner they understand. 42 CFR §483.15(c)(3)(i). The facility must send a copy of the notice to the long-term care ombudsman program. Except when specified below, the notice must be given at least 30 days before the resident is transferred or discharged (see the next section).

The notice must contain all the following information. If any of the following items are missing, the notice is not valid:

- The reason for the transfer or discharge (42 CFR §483.15(c)(5)(i));
- The effective date of transfer or discharge (42 CFR §483.15(c)(5)(ii));
- The location to which the resident will be transferred or discharged (42 CFR §483.15(c)(5)(iii));
- A statement of the resident's appeal rights, information on how to obtain an appeal form and

assistance in completing and submitting the appeal request (42 CFR §483.15(c)(5)(iv));

- The name, mailing address, email address and phone number of the Transfer and Discharge Appeal Unit operated by the Office of Administrative Hearings and Appeals within the California Department of Health Care Services (42 CFR §483.15(c)(5)(iv) and California Department of Public Health All Facility Letter (AFL) 10-20):
- The name, mailing address, email address and telephone number of the Long-Term Care Ombudsman (42 CFR §483.15(c)(5)(v));
- For residents who have a developmental, intellectual or mental disability, the phone number, mailing address, and email address of California’s protection and advocacy agency, Disability Rights California (42 CFR §483.15(c)(5)(vi)&(vii));
- A statement that the resident may represent him/herself or use legal counsel, a relative, a friend, or other spokesperson (42 CFR §431.206).

If the information in the notice changes, the facility must notify the resident and resident’s representative of the changes as soon as practicable. 42 CFR §483.15(c)(6). For significant changes, such as a change in the destination, a new notice must be given that clearly describes the change(s) and resets the transfer or discharge date, in order to provide 30 day advance notification. CMS State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, at F623.

A resident does not have to leave the facility if it has not provided a written notice that complies with these requirements.

### **Exceptions to 30-Day Notice**

As mentioned above, there are a few exceptions to the 30-day notice requirement. Federal regulations permit notice to be made “as soon as practicable” before transfer or discharge when: the health or safety of individuals in the facility would be endangered; the resident’s urgent medical needs require a more immediate transfer; the resident’s health has improved sufficiently to allow a more immediate transfer or discharge; or the resident has resided in the facility less than 30 days. 42 CFR §483.15(c)(4).

Even if an exception to the 30-day notice requirement is satisfied, the facility must nevertheless provide written notice in advance of a proposed transfer or discharge and an opportunity to appeal. A nursing home cannot transfer or discharge a resident while an appeal is pending, unless delay would endanger the health or safety of the resident or other individuals in the facility. 42 CFR §483.15(c)(1)(ii).

California law requires nursing homes to give “reasonable advance notice” in writing in all cases of transfer or discharge, unless there is an emergency. H&S Code §1599.78, 22 CCR §72527(a)(6).

### **Appealing a Transfer or Discharge**

A resident has the right to appeal the nursing home’s attempted transfer or discharge, and have a hearing and decision issued by the California Department of Health Care Services. To request an appeal, call the Transfer/Discharge and Refusal to Readmit Unit of the Department of Health Care Services at (916) 445-9775 or (916) 322-5603.

Once an appeal has been made, the facility may not discharge the resident while the appeal is pending. CMS State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, at F623.

A hearing officer who works for the Department of Health Care Services will conduct the hearing and issue a written decision. The hearings are usually held at the nursing home where the resident resides or, if the resident is hospitalized and appealing a denial of readmission, at the hospital.

The resident has important due process rights to ensure a fair hearing process. Subpart E of Part 431 in Title 42 of the Federal Code of Regulations. During transfer and discharge appeals, residents have the right to:

- Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by the skilled nursing facility at the hearing (42 CFR §431.242(a));
- Bring witnesses (42 CFR §431.242(b));
- Establish all pertinent facts and circumstances (42 CFR §431.242(c));
- Present an argument without undue interference (42 CFR §431.242(d)); and
- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses (42 CFR §431.242(e)).

If the hearing decision is favorable to a resident who was improperly transferred or discharged, the Department of Health Care Services must promptly provide for the resident's admission or readmission to the nursing home. 42 CFR §431.246.

### **Readmission to a Nursing Home After a Hospital Stay**

Nursing home residents have the right to be readmitted after a hospital stay. Whenever a resident is transferred to a hospital, the nursing home must allow the resident or family member to hold the resident's bed for up to seven days. 22 CCR §72520. This is called a bed hold. If the resident is on Medi-Cal, the Medi-Cal program will pay for the bed hold for up to seven days. 22 CCR §51535.1. Nursing homes must give a written bed-hold notice to the resident and a family member when a resident is transferred to the hospital. 22 CCR §72520(b) & 42 CFR §483.15(d). If the nursing home doesn't comply, the nursing home must offer its next available bed at the conclusion of the hospital stay. 22 CCR §72520(c).

Furthermore, any resident on Medi-Cal has a right to be readmitted to a nursing home even if the resident's hospital stay exceeds seven days. If the resident still needs nursing home care, the nursing home must readmit the resident to his or her previous room if available or immediately to the first available bed in a semi-private room. 42 CFR §483.15(e).

The facility's refusal to honor a bed hold or readmit a resident following a hospital stay will be treated as an involuntary transfer, allowing the resident the right to appeal the transfer. H&S Code §1599.1(h). To request an appeal, call the Transfer/Discharge and Refusal to Readmit Unit of the Department of Health Care Services at (916) 445-9775 or (916) 322-5603 and ask for a readmission appeal. If the resident is Medi-Cal eligible or has another source of payment, he/she can remain in the hospital until the final determination of the hearing officer. If the resident is not on Medi-Cal or has no other source of payment, the hearing and final determination must be made within 48 hours. H&S Code §1599.1(h)(5).

If the hearing decision is favorable to a resident who was denied readmission, the Department of Health Care Services must promptly provide for the resident's readmission to the nursing home. 42 CFR §431.246.

See the above section on "Appealing a Transfer or Discharge" for more information regarding appeals.

### **Converting to Medi-Cal**

A resident who becomes eligible for Medi-Cal after admission is only required to pay charges allowed by Medi-Cal, known as a "share-of-cost." 42 CFR §483.10(f)(11), H&S Code §1599.69.

Facilities are prohibited from transferring or discharging residents who have made a timely application for Medi-Cal and for whom an eligibility determination has not been made. W&I Code §14124.7, 42 CFR §483.15(c)(1)(i)(E). If a resident's initial Medi-Cal application is denied but appealed, the resident is not considered to be in nonpayment status. Thus, an appeal suspends a finding of nonpayment. CMS State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, at F622.

In addition, facilities are prohibited from transferring the resident to a different room due to a change from Medicare or private payment to Medi-Cal, except that the resident may be transferred from a private room to a semi-private room. W&I Code §14124.7.

## **Evicting Residents After Medicare Coverage Ends**

One of the most common – and illegal – types of nursing home evictions is throwing residents out when their Medicare coverage ends. Residents on Medicare have the right to challenge coverage determinations about their skilled nursing facility stay and to remain in the facility after their Medicare coverage ends if they still need nursing home care and their care is paid for.

In Medi-Cal certified facilities, residents on Medicare have a right to transition to Medi-Cal if they are eligible. W&I Code §14124.7. Every bed in a Medi-Cal certified skilled nursing facility is certified so a facility's claim that it does not have available Medi-Cal or "long term care" beds is untrue. It is illegal to discriminate against residents who are on Medi-Cal or applying for it. W&I Code §14124.10, 42 USC §1396r(c)(4).

A notice of non-coverage from Medicare or other insurers is not the same as a transfer or discharge notice from a nursing home and does not suffice to initiate a transfer or discharge.

If a nursing home is pressuring you to leave voluntarily when your Medicare days are up, simply don't go. Tell it that no discharge can be performed without following all of the notice and other legal requirements and that changing payment source is not a sufficient legal reason for discharge.

For more information on the transfer and discharge rights of residents on Medicare, read CANHR's commentary on the [epidemic in nursing home evictions after Medicare coverage ends](#) and the Center for Medicare Advocacy's excellent [issue brief on the discharge rights of Medicare beneficiaries](#).

## **Transfer Trauma and Discharge Planning**

The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. 42 CFR §483.15(c)(7)). Staff should take steps to minimize unnecessary and avoidable anxiety or depression that often accompanies a transfer. This phenomenon is known as "transfer trauma," and it occurs when residents have little choice or control over their discharge.

Nursing homes must also provide discharge planning for each resident that treats the resident and resident representative as partners in planning the discharge and is focused on the resident's discharge goals and treatment preferences. 42 CFR §483.21(c). When a facility is planning to transfer a resident to another nursing home, it must assist the resident in using available data on the quality of facilities to help the resident select a facility that can meet his or her care and treatment preferences. The facility must also share a great deal of important care information to the "receiving provider" before initiating a transfer or discharge. 42 CFR §§483.15(c)(2)(iii), 483.21(c)(2).

If discharge to home or another community setting is planned, the nursing home must make and document appropriate referrals to services and resources in the community. The facility must develop a discharge summary that recapitulates the resident's stay and a post-discharge plan of care that indicates where the resident plans to reside, arrangements for follow-up care and any post-discharge medical and non-medical services. 42 CFR §483.21(c), H&S Code §1418.81.

## **Resident Dumping**

Facilities often try to "dump" residents they view as undesirable. However, no resident may be transferred or discharged unless all of the procedural requirements previously discussed are satisfied. Nursing homes are bound by law to provide services to allow each resident to attain or maintain his/her highest practicable physical, mental and psychosocial well being. 42 USC §1396r(b)(2), 42 CFR §483.24. Facilities that attempt to dump residents typically have failed to provide such services.

## **Retaliation**

Facilities also attempt to evict residents when a family member has filed a complaint with the state. State law forbids a nursing home from evicting a resident because someone has filed a complaint on the

resident's behalf. Any attempt to do so within 180 days of the complaint will be presumed as retaliation or discrimination. H&S Code §1432.

### **Facility Closures**

If a facility is closing, California law requires it provide the residents with a minimum of 30 days advance written notice, which can be extended up to an additional 60 days if needed. H&S Code §1336. In addition, the facility must make significant efforts to minimize transfer trauma such as identifying residents' relocation needs and suggesting alternative placements. H&S Code §1336.2. If 10 or more residents are going to be discharged as a result of the closure, the facility must develop a relocation plan and obtain state approval from the California Department of Public Health. H&S Code §1336.2.

Federal law requires at least 60 days notice of an impending closure to residents, their representatives, the Department of Public Health and the long-term care ombudsman. A facility cannot admit any new residents after this notification is submitted. The nursing home's transfer plan must include assurances that residents will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice and best interests of each resident. 42 CFR §483.70(l), 42 CFR §483.15(c)(8).

### **Investigation by the California Department of Public Health**

In addition to filing an appeal with the Department of Health Care Services (as described above), you have the right to file a complaint with the Department of Public Health (DPH) if you are being evicted or denied readmission. The DPH is the California agency charged with licensing and inspecting nursing homes. If you file a complaint, the DPH will make its own findings on the nursing home's compliance with transfer, discharge and readmission requirements. It can impose fines and other penalties against the nursing home if it finds your rights are being violated. Contact the DPH district office of its Licensing and Certification Division in your area to file a complaint. [CANHR's fact sheet on filing a complaint](#) gives contact information for district offices and details on the complaint process.

### **Advocacy Tips on Fighting an Eviction**

- **Call DHCS and DPH immediately if you are about to be transferred or discharged without the required written notice.** Ask them to intervene immediately to stop the imminent eviction.
- **Contact the nursing home administrator.** Explain the reasons the proposed transfer or discharge is improper. Document the conversation in writing by sending a letter to the administrator via certified mail.
- **Contact the ombudsman.** The [long-term care ombudsman program](#) helps residents resolve conflicts with nursing homes. An ombudsman can sometimes help stop an improper eviction or participate in an appeal hearing on behalf of a resident.
- **Review the notice.** If it does not include all of the information required under "Written Notice," raise the defects at the appeal hearing.
- **Review the resident's records:** Since the resident's health condition is often at issue, a thorough review of the records is essential. You have a right to examine at a reasonable time before the date of the hearing (and at the hearing) all documents and records to be used by the nursing home at the hearing. Ask the nursing home for these records before the hearing. Notify the hearing officer if it does not provide the records.
- **Assess the transfer or discharge plan.** Challenge the plan at the hearing if the facility does not have an adequate discharge plan or is planning to transfer the resident to a facility that cannot meet his or her needs or has developed its plan without consulting with the resident.
- **Challenge transfers to other nursing homes.** When nursing homes claim they cannot meet a resident's needs, they often plan to transfer the resident to another nursing home that is

identically licensed and certified. If this is occurring, point out that its transfer plan confirms nursing home care is needed and that the transfer plan reflects the failure of the current nursing home to provide needed and required care.

- **Immediately appeal a refusal to readmit a hospitalized resident.** If a nursing home is denying readmission to a hospitalized resident, file an appeal with DHCS as soon as possible. The appeal gives the resident the right to remain in the hospital until a hearing decision is issued.
- **Contact CANHR if a nursing home ignores a readmission order from DHCS.** CANHR is monitoring nursing home compliance with readmission orders.
- **Appeal Medi-Cal denials.** If the transfer/discharge is based on non-payment because Medi-Cal has denied eligibility or coverage of the nursing home stay, the resident should appeal both the transfer/discharge and the Medi-Cal denial. There is a separate appeal process for Medi-Cal denials.
- **Don't mix up coverage denials with transfer and discharge notices.** Coverage denials by Medicare, Medicare managed care plans and other insurers address payment for your care, not your right to stay in the nursing home. All residents, including those who have received coverage denials, have the right to transfer and discharge notice from the nursing home and the right to appeal before any transfer or discharge is made.

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H&S refers to California Health and Safety Code; W&I refers to California Welfare and Institutions Code; 22 CCR refers to Title 22 of the California Code of Regulations; 42 USC refers to Title 42 of the United States Code; and 42 CFR refers to Title 42 of the Code of Federal Regulations.

For more information on transfer, discharge, and readmission rights, contact CANHR at (800) 474-1116.