

## Challenging Hospital Discharge Decisions

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

### Introduction

Hospital stays are difficult times for patients and their families, especially for those who need long term care upon discharge. Increasingly, short hospital stays pose a tremendous challenge to families who must arrange post-hospital care quickly while also tending to their loved one's illness and emotional needs. Hospitals have required duties to help patients and their families find and arrange needed care, however, some do this better than others and these duties are often compromised by the desire (usually financial) to discharge patients quickly. You may find it is critically important to know your rights and how to exercise them. This fact sheet describes California and federal requirements for safe discharge planning; Medicare coverage and appeal rights; and ways to prevent a premature or inappropriate discharge.

### Hospital Requirements Prior to Transfer to a Health Facility

Before a hospital can transfer a patient to another health facility, the hospital must make arrangements for admission with the receiving health facility. (22 Cal. Code of Regs. Section 71717(f)(1)) The hospital must also have a determination from the patient's physician that the transfer will not create a hazard to the patient. (22 Cal. Code of Regs. Section 71717(f)(2)) In addition, the hospital must give the patient or the person legally responsible for the patient a minimum of 24-hours notice and, if needed, counseling for post-hospital care. (22 Cal. Code of Regs. Section 71717(f)(3); Health and Safety Code Section 1262.5(b))

Hospitals are required to allow patients to designate a "family caregiver" such as a relative, friend, or neighbor who will be notified when a discharge order is written and can assist in discharge planning. (Health and Safety Code Section 1262.5(d))

### Medicare

During a hospital stay, Medicare beneficiaries have important rights to receive the medical care they need. You have these rights whether you are enrolled in the original Medicare plan or a Medicare health plan.

Hospitals have a strong financial incentive to discharge Medicare patients as quickly as possible. Medicare generally pays hospitals flat rates based on the type of medical problem being treated. If the hospital spends less money on your care than Medicare pays, it makes a profit, and vice versa.

To protect you from being discharged too quickly, Medicare gives you the right to appeal hospital discharge decisions. It also requires the hospital to provide any discharge planning services you need.

### Your Medicare Rights

At or near admission, a hospital must give you the Important Message from Medicare. This Medicare notice explains that you have the right:

- To receive Medicare covered services, including necessary hospital services and services you may need after discharge, if ordered by your doctor. You have a right to know about these services, who will pay for them, and where you can get them.
- To be involved in any decisions about your hospital stay, and know who will pay for it.

- To appeal if you think you are being discharged too soon. The notice also explains how to file an appeal.

## **Notifying You of Your Rights**

To make sure you are informed about your discharge rights in a timely manner, hospitals must usually give you the Important Message from Medicare twice, once upon admission and again before discharge.

The hospital must first give you the Important Notice from Medicare at or near admission, but no later than two days after admission. At that time, it must ask you to sign and date the notice. The hospital must give you the original copy of the signed notice and keep a copy for its records.

Before you are discharged, the hospital must give you another copy of the Important Message from Medicare. It must give you this notice as far in advance of your discharge as possible, but not less than 2 days before your planned date of discharge. The second notice is not required during very short hospital stays if the original notice was given to you within two days of your planned discharge date.

If the hospital gives you the second notice on the date of your discharge, it must deliver it to you at least four hours before your planned discharge.

The hospital must deliver the Important Message from Medicare to you in person. However, if you cannot understand the notice, the hospital must deliver it to your representative and ask him or her to sign it. Your representative can be someone who has legal authority to act for you, a family member or close friend.

## **Appealing Hospital Discharge Decisions**

Your hospital, doctor, or Medicare health plan will inform you of your planned date of discharge. If you think you are not ready to leave the hospital, tell your doctor and the hospital staff immediately about your concerns. Ask your doctor to advocate for your interests. Sometimes hospitals and health plans pressure doctors to arrange quick discharges.

You should request an appeal if your concerns about early discharge are not resolved. **You can stay in the hospital and Medicare will continue to cover your stay as long as you file the appeal before you are discharged.** Once you appeal, you will not have to pay for the services you receive during the appeal (except for charges like copays and deductibles).

It is best to file your appeal on or just before the planned date of discharge. Ask for a "Fast Appeal." Your representative, such as a legal agent or family member, can file an appeal on your behalf.

**To file your appeal, call LIVANTA at 1-877-588-1123.** Livanta is a "Quality Improvement Organization" (QIO) – a private organization working under contract with Medicare to handle certain appeals and other matters. Tell Livanta why you object to the planned discharge and provide any information that supports your appeal. For more information about Livanta or appeals, go to [the Livanta website](#).

After you file your appeal, the hospital (or your Medicare health plan) must give you a Detailed Notice of Discharge that explains the reasons it thinks you are ready to be discharged. The hospital will send a copy of your medical records to Livanta for its review.

These appeals are completed quickly. Livanta will notify you and the hospital of its decision, usually within one day after it receives the necessary information.

- If Livanta finds that you are not ready to be discharged, Medicare will continue to cover your hospital stay.
- If Livanta finds you are ready to be discharged, Medicare will continue to cover your services until noon of the day after Livanta notifies you of its decision.

Livanta must notify you of its decision by telephone and in writing. The written notice will describe additional options for appeal.

### **Discharge Planning Services**

Medicare certified hospitals must help patients arrange care needed after discharge. This service, called discharge planning, is usually provided by the hospital's social work or discharge planning department.

Contact the discharge planning department as soon as possible after admission. Discuss help and care you will need after discharge. Ask for recommendations and help in arranging necessary care and services. Request a copy of your written discharge plan and seek changes if necessary.

Medicare certified hospitals must:

- Have an effective discharge planning process that focuses on the patient's goals and treatment preferences and includes the patient and his or her caregivers/support persons as active partners in the discharge planning for post-discharge care;
- Identify, at an early stage of hospitalization, patients who need discharge planning;
- Conduct discharge planning evaluations for identified patients, as well as for other patients upon the request of the patient, patient's representative, or patient's physician;
- Prepare discharge planning evaluations on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge;
- Evaluate the patient's need for post-hospital services such as hospice care, home health services, and community-based care and determine their availability to the patient;
- Discuss the evaluation results with the patient or representative;
- Develop and implement a discharge plan upon the request of a patient's physician;
- Ensure discharge plans are consistent with the patient's goals and treatment preferences and provide an effective transition from hospital to post-discharge care;
- Reevaluate and modify discharge plans as needed;
- Transfer or refer the patient, along with necessary medical information, to appropriate facilities, agencies or outpatient services for follow-up care, in accordance with the patient's needs and preferences;
- Use professional staff to deliver discharge planning services.

These requirements are found at Title 42, Code of Federal Regulations, Section 482.43 and Title 42, United States Code, Section 1395x(ee). Additional California hospital discharge planning requirements are established at California Health and Safety Code Sections 1262.5 -1262.6.

### **Discharges for Patients Needing Long Term Care**

If you are in need of long-term care services, the hospital must provide you with contact information for at least one public or nonprofit agency or organization dedicated to providing information or referral services to community-based long-term care options. This information must include contact information for the area agency on aging serving your county of residence, local independent living centers, or other information appropriate to your wishes and needs. California Health and Safety Code Section 1262.5(h).

Additionally, the hospital must provide a list of local home health agencies, skilled nursing facilities and other types of long term care providers if their services are indicated. The hospital must identify facilities and agencies in the geographic area in which you reside or in an area you request and respect your preferences whenever possible. Title 42 Code of Federal Regulations, Section 482.43(c).

You are free to choose facilities and agencies in accordance with your preferences and health coverage. Hospitals must share relevant data to help you make informed decisions in selecting a facility or agency. They must also identify affiliated health care providers so you will know if the hospital has a financial interest in the referral. Title 42 Code of Federal Regulations, Section 482.43(a)&(c).

The hospital cannot force you to go to any particular facility and must, when possible, respect preferences you and your family express. Title 42, Code of Federal Regulations, Section 482.43(c)(2).

If you are referred to a facility that has a record of poor care or is too far away, tell the hospital your concerns. You do not have to go to a facility that cannot meet your needs or is far away. Ask the hospital to help you gain admission to facilities in the area of your choice that meet your care standards. If you want Medicare or Medi-Cal to help pay for your care, now or in the future, limit your search to facilities that are certified by these programs.

The hospital must allow you to stay if you need skilled nursing facility services but a bed is not available in your area. Medicare covers hospital stays until a skilled nursing facility bed is located. Title 42, Code of Federal Regulations, Sections 424.13 and 412.42.

Visit facilities under consideration and determine whether they meet your needs and expectations. Check CANHR's fact sheets on [how to choose a nursing home](#) and [how to choose an assisted living facility](#) if applicable.

### **Refusing a Proposed Discharge**

If you are unhappy with a proposed discharge placement, explain your concerns to the hospital staff, in writing if possible. Ask to speak with the hospital Risk Manager and let them know you are unhappy with your discharge plan.

If a hospital proposes an inappropriate discharge, you may refuse to go. Although you cannot stay in a hospital indefinitely, the hospital cannot discharge someone needing long term care until it arranges safe and adequate follow-up care. California state policy and some local ordinances prohibit hospitals from discharging their patients to homeless shelters or to the streets.

Remember, if the hospital is proposing to transfer the patient to a health facility, like a nursing home, it must "have arrangements" made for the admission. Thus, if the patient makes it clear to the receiving health facility that the patient will refuse admission, will not sign an admission agreement, and will not pay for any services, it is unlikely the hospital can claim that arrangements have been made.

### **Filing Complaints**

Call Livanta at 1-877-588-1123 about hospital complaints, including discharge problems and quality of care concerns.

You can also file hospital complaints with California's licensing agency, the California Department of Public Health (CDPH). To make a complaint, contact the [district office of the CDPH Licensing and Certification Division](#) for your area.

### **Additional Resources**

Contact your local Health Insurance Counseling and Advocacy Program (HICAP) office for help with Medicare concerns. Call 1-800-434-0222 to be connected automatically with the HICAP office in your California County or go to the [California Health Advocates' website](#) information about Medicare and HICAP in California.

[The Center for Medicare Advocacy publishes a self-help packet on hospital discharge appeal rights.](#)

You can also contact Medicare directly at 1-800-MEDICARE (1-800-633-4227) or find resources on its web site at [www.medicare.gov](http://www.medicare.gov).