

Transfer & Discharge Rights

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.

Residents have very specific rights regarding the facility's ability to transfer or discharge a resident out of a skilled nursing facility.

A resident may be transferred or discharged only if:

- The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility (42 C.F.R. §483.12(a)(2)(ii));
- It is necessary for the resident's welfare and the resident's needs cannot be met in the facility (42 C.F.R. §483.12(a)(2)(i));
- The health of individuals would otherwise be endangered (42 C.F.R. §483.12(a)(2)(iv));
- The safety of individuals is endangered (42 C.F.R. §483.12(a)(2)(iii));
- The resident has failed, after reasonable and appropriate notice, to pay (42 C.F.R. §483.12(a)(2)(v));
- The facility ceases to operate (42 C.F.R. §483.12(a)(2)(vi)).

Documentation

The facility must have adequate documentation in the resident's records to substantiate a transfer or discharge (42 C.F.R. §483.12(a)(3)). The records must document accurate assessments and attempts through care planning to address the resident's needs, through multi-disciplinary interventions, attention to the resident's customary routines, and accommodation of individual needs. Under reasons 1 and 2 listed above, the resident's physician must provide documentation. Under reason 3, any physician can provide documentation. Under reason 5, for a resident who becomes eligible for Medi-Cal after admission, only allowable charges may be imposed by the facility. Conversion from private pay to Medi-Cal is not grounds for eviction (Cal. Welfare & Institutions Code §14124.7).

Written Notice

Before transferring or discharging a resident, the facility must provide written notice to the resident, and if known, to a family member or legal representative. Except when specified below, the notice must be given at least 30 days before the discharge date (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 and the effective date (42 C.F.R. §483.12 (a)(6)(i - ii));
- the location to which the resident will be transferred (42 C.F.R. §483.12 (a)(6)(iii));
- a statement that the resident has the right to appeal to the state (42 C.F.R. §483.12 (a)(6)(iv));
- the name, 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 (California Department of Public Health All Facility Letter (AFL) 10-20);

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- the name, address and phone number of the Long-Term Care Ombudsman (42 C.F.R. §483.12(a)(6)(v));
 - a statement that the resident may represent him/herself or use legal counsel, a relative, friend or other spokesperson (PPM §618.03);
 - a statement that the resident or resident's representative must be allowed to review, prior to and during the appeal hearing, the resident's medical records and the documents to be used by the state (PPM §618.03);
 - a statement that the resident may bring witnesses to the hearing (PPM §618.03);
 - a statement that the resident should file the appeal within 10 days so as not to jeopardize the ability of the state to make a ruling prior to the discharge date (PPM §618.03);
 - a statement that the facility may permit the resident to remain even if the state has not made a decision within 30 days (PPM §618.03);
 - a statement that if the state upholds the discharge notice, that the resident should be prepared to be transferred (PPM §618.03).

Exceptions to 30-Day Notice

As mentioned above, there are a few exceptions to the 30-day notice requirement. Generally these exceptions are for more serious or immediate situations. Under California law, "reasonable notice" must be given in all cases of transfer or discharge, unless there is an emergency (Cal. Health & Safety Code §1599.78). Under federal law, notice may be made "as soon as practicable" 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 and a more immediate transfer is appropriate; the resident has resided in the facility less than 30 days (42 C.F.R. §483.12(a)(5)). *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.*

Converting to Medi-Cal

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. In addition, facilities are prohibited from transferring the resident to a different room because of that payment change, except that the resident may be transferred from a private room to a semi-private room (Cal. Welfare & Institutions Code §14124.7).

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 Cal. Code of Regulations §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 Cal. Code of Regulations §51535.1).

Nursing homes must offer a written bed-hold notice to the resident and a family member when a resident is transferred to the hospital (22 Cal. Code of Regulations §72520(b) & 42 C.F.R. §483.12(b)(2)). If the nursing home doesn't comply, the nursing home must offer its next available bed at the conclusion of the hospital stay (22 Cal. Code of Regulations §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 him or her to the first available bed in a semi-private room (42 C.F.R. §483.12(b)(3)).

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 (Cal. Health & Safety 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 (Cal. Health & Safety Code §1599.1(h)). See the "Appealing a Transfer or Discharge" section below for more information regarding appeals.

Transfer Trauma

The facility must also provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility (42 C.F.R. §483.12 (a)(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.

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 C.F.R. §483.25). Facilities that attempt to dump residents typically have failed to provide such services.

Admission Contracts

Some nursing home admission agreements include promises about eviction procedures in addition to what the law requires. These promises are enforceable.

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 (California Health & Safety Code § 1432).

Facility Closures

If a facility is closing, it must provide the residents with a minimum of 30 days advance written notice. In addition, the facility must make significant efforts to minimize transfer trauma such as identifying residents' relocation needs and suggesting alternative placements (Cal. Health & Safety 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.

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. It is very important that the resident file an appeal and request for hearing within 10 days of the date of the transfer/discharge notice. **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.**

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.

Here are a few basic steps to follow if a nursing home attempts an eviction:

- **Has the resident received anything in writing about the proposed transfer/discharge?**
 - If not, the nursing home cannot evict the resident. (see above, "Exceptions to 30-day Notice.")
 - If the resident has received written notice, check that it contains all of the information listed above under "Written Notice." If it does not, then the notice is not valid, and the nursing home cannot evict the resident until it gives a complete, proper notice. Has the nursing home given less than 30 days notice? If so, check above under "Exceptions to 30-Day Notice" to see if the nursing home is allowed to do so.
 - Is the reason given for transferring the resident one of the 6 valid reasons listed at the beginning of page one of this fact sheet? If not, the attempted transfer is not legal.
- **Has the resident's discharge been properly planned?** A nursing home is not allowed to simply evict a resident, but rather it must provide planning, in advance, to help the resident get oriented to the new place he or she will be going. If no discharge planning has been done, the proposed eviction may be challenged on that basis.
- **File an appeal and a request for hearing within 10 days of receipt of a written notice of transfer or discharge.**
- **File a complaint with the California Department of Public Health.** In addition to filing an appeal, you may file a complaint with the Department of Public Health (DPH), the California agency charged with licensing and inspecting nursing homes. The DPH will make its own findings on the nursing home's compliance with transfer and discharge requirements. To file a complaint with DPH, contact the district office of the Licensing and Certification Division in your area. Information on filing a complaint and contact information for the district offices is available at: http://canhr.org/factsheets/nh_fs/html/fs_NH_complaint.htm#licensing.
- **Contact the Ombudsman.** The Long-Term Care Ombudsman Program helps residents resolve conflicts with nursing homes. Getting the Ombudsman involved can sometimes help stop an improper eviction. Call the statewide Elder Service Locator number at 1-800-510-2020 for your local ombudsman office.
- **Contact the nursing home.** Talk to the Administrator of the nursing home and tell him or her the reasons that the proposed transfer or discharge is not proper (e.g. the resident has not been given written notice, the reason given for the transfer is not one of the allowable 6 reasons, no discharge planning has been done, etc.). After talking to the Administrator, always document the conversation in writing, by sending a letter to the nursing home outlining what was discussed, and reiterating that the proposed eviction is improper. Always send such a letter by certified mail.

- **Request the resident's records from the nursing home.**

- If the appeal goes to a hearing, a review of the resident's records will help prepare his or her case. Since documentation about the resident's health condition is often at issue, a thorough review of the records is essential.
- Federal law gives you the right to: (a) examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by the nursing home at the hearing; (b) bring witnesses; (c) establish all pertinent facts and circumstances; (d) present an argument without undue interference; and (e) question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. (42 C.F.R. §431.242)

- **Readmission following the hearing.** 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 C.F.R. §431.246)

These transfer and discharge rights are found under both Federal and State law. The Federal rights are found in the Code of Federal Regulations ("C.F.R."), Title 42, which can be accessed online at <http://www.gpoaccess.gov/cfr/index.html>. Additional rules governing notices, hearings, decisions and corrective actions are found at 42 C.F.R. §431.200 - §431-246. The State rights are found in the Health & Safety and Welfare & Institutions Codes, which can be accessed online at <http://www.leginfo.ca.gov/calaw.html>. The required contents of the Notice of Transfer/Discharge are found in §618.03 of the Policy & Procedure Manual, published by the Department of Public Health, Licensing & Certification Division.

For more information on transfer, discharge and appeal rights, contact CANHR at **(800) 474-1116** or visit **www.canhr.org**.