
Nursing Home Residents' Rights

— Jaclyn Flores, MSW, Consumer & Policy Advocate —

Outline of Nursing Home Residents' Rights

- Admission Rights

- Every nursing home must use Standard Admission Agreement developed by the Department of Public Health (H&S Code §1599.61, 22 CCR §72516)
- Admission Agreement must include a copy of the Patients' Bill of Rights (H&S Code §1599.74(b))
- Admission Agreement must provide that if the resident is transferred to an acute care hospital, their bed will be held for seven days (H&S Code §1599.79; 22 CCR §72520)
- Nursing homes cannot require residents to sign an arbitration agreement as a condition of admission or medical treatment (H&S Code §1599.81(a), 22 CCR §72516)
 - Residents can rescind an arbitration agreement by written notice within 30 days of their signature (California Code of Civil Procedure §1295(c))
- Medi-Cal certified nursing homes cannot require residents to pay privately for any period that the resident has been approved by Medi-Cal (H&S Code §1599.69(a))

- Transfer and Discharge Rights

- Medi-Cal certified nursing homes cannot transfer or evict residents for switching from private pay or Medicare to Medi-Cal (W&I Code §14124.7(a); 42 CFR §483.15(c)(1)(i); 42 USC §1396r(c)(2)(A))
- A physician must document the basis for transfer or discharge in the resident's clinical record (42 USC §1395i-3(c)(2)(A); 42 USC §1396r(c)(2)(A); 42 CFR §483.15(c)(2))
- Nursing Home must provide sufficient preparation and orientation to ensure safe and orderly transfer or discharge from the facility (42 USC §1396r(c)(2)(C); 42 CFR §483.15(c)(7))

Outline of Nursing Home Residents' Rights Cont'd

- Rights Within Nursing Home

- Right to receive the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being (42 USC §1396r(b)(2); 42 USC §1395i-3(b)(2); 42 CFR §483.24; 22 CCR §72315)
- Right to choose personal attending physician (42 U.S.C. 1395i-3(c)(1)(A)(i); 42 U.S.C. 1396r (c)(1)(A)(i); 42 C.F.R. 483.10(d))
- Right to refuse transfer to or from a distinct part of a skilled nursing facility (42 USC §1395i-3(c)(1)(A)(x); 42 USC §1396r (c)(1)(A)(x); 42 CFR §483.10(e)(7) & (8))
- Right not to be discriminated against based on source of payment (42 U.S.C. 1395i-3(c)(4); 42 U.S.C. 1396r(c)(4); 42 CFR §483.15(b); W&I Code §14124.10)
- Right to voice grievances and recommend changes in policies and services to facility staff, to contact outside representatives, to file complaints, and to cooperate in inspections and investigations free from restraint, interference, coercion, discrimination or reprisal (H&S Code §1432, 22 CCR §72527(a)(7); 42 USC §1395i-3(c)(1)(A)(vi); 42 USC §1396r(c)(1)(A)(vi); 42 CFR §483.10(j))

Transitioning to Medi-Cal After Medicare

Scenario 1 - If resident is already on Medi-Cal:

- The resident or resident representative needs to notify the SNF to begin billing Medi-Cal
- Medi-Cal Asset Limitations apply

Scenario 2 - If resident is NOT on Medi-Cal:

- Resident or resident representative needs to submit an application
 - Nursing home must help the resident calculate their **estimated** share of cost (W&I Code 14110.8(e))

Discharge Protections During Transition

- SNF CANNOT discharge resident while there is a pending Medi-Cal application
W&I Code §14124.7, 42 CFR §483.15(c)(1)(i)(E)
- Once a resident becomes eligible for Medi-Cal, the only charges they're required to pay are known as the "Share of Cost." 42 CFR §483.10(f)(11), H&S Code §1599.69
- If the resident is denied for Medi-Cal but appeals the denial, the resident is NOT considered to be a nonpayment status and cannot be discharged. CMS State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, at F622
 - An appeal suspends a finding of non-payment
- Facility cannot transfer a resident to a different room because of transition to Medi-Cal (from Medicare or private payment). However, they can be transferred from a private to semi-private room. W&I Code §14124.7

Common Myths

1. **“Your Medicare is running out. You should find another facility.”** - It is illegal for the facility to discharge the resident because Medicare coverage has ended. Furthermore, a Medicare Notice of Non-Coverage (MNOC) is NOT a discharge notice. W&I Code §14124.7(a), 42 CFR §483.15(c)(1)(i), 42 USC §1396r(c)(2)(A)
 - a. Sometimes facilities won't tell you Medi-Cal will pay for long term care. Most facilities in CA are Medi-Cal certified.
2. **“We don't have Medi-Cal beds available.”** - Every bed in the SNF is available for Medi-Cal residents if the SNF is certified by Medi-Cal. If resident does have Medi-Cal, they have the right to transition to Medi-Cal. W&I Code §14124.10, 42 USC §1396r(c)(4)
3. **“We only have short-term beds available.”** - In order to be licensed as a SNF in CA, the facility must provide long term care. H&S Code 1250(c)(1), H&S Code 1250(k)

MONEY IS THE MOTIVATOR!!!

Transfer & Discharge Protections

- The SNF must provide a written, 30-day notice when transferring or discharging a resident.
 - The written notice must contain the following information about the discharge:
 - 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 and California Department of Public Health All Facility Letter (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 ANY of the items are missing, the notice is NOT valid.
 - Transfer & Discharge Factsheet: http://canhr.org/factsheets/nh_fs/PDFs/FS_Transfer.pdf

Transfer & Discharge Protections Cont'd

- SNFs have 6 legal reasons to transfer or discharge a resident:
 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))
- Exceptions to **30-day** notice: If one of the six is satisfied, the facility must **STILL** provide a written notice. However, the facility is required to give "reasonable advance notice" in writing, and the resident still has the right to appeal the proposed discharge. H&S Code §1599.78, 22 CCR §72527(a)(6).

Appealing a Transfer or Discharge at SNF

- The resident has a right to appeal a transfer or discharge, and CANNOT be discharged while there is a pending appeal. CMS State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, at F623
- The resident has important due process rights to ensure a fair hearing process with the Department of Health Care Services (DHCS). Subpart E of Part 431 in Title 42 of the Federal Code of Regulations
 - A hearing officer from DHCS will conduct the hearing and issue a written decision.
 - To file an appeal with DHCS the resident must contact the **Transfer Discharge and Refusal to Readmit Unit** at **(916) 445-9775** or **(916) 322-5603**
- If the hearing decision is favorable to the resident, DHCS will order the facility to rescind discharge notice. 42 CFR §431.246

Bed Hold Protections

- Residents have the right to be readmitted after a hospital stay
 - The SNF is required to notify the resident of their right to a bed hold. 22 CCR §72520
 - If the resident is on Medi-Cal, Medi-Cal will pay the bed hold for up to 7 days. 22 CCR §51535.1
- The SNF must provide a written bed hold notice to the resident and their representative when transferred to the hospital. 22 CCR §72520(b) & 42 CFR §483.15(d)
 - **If no notice given**, the nursing home MUST offer the NEXT available bed after the hospital stay. 22 CCR §72520(c)
- Medi-Cal residents have a right to be readmitted even if the hospital stay exceeds 7 days. The resident must be readmitted to their previous room, or to the first available bed in a semi-private room. 42 CFR §483.15(e)
- SNF refusal to honor a bed hold is treated as an involuntary transfer and resident has the right to appeal with DHCS. H&S Code §1599.1(h)
 - If the hearing decision is favorable to the resident, the facility must readmit the resident

Complaint Rights

- Any person has the right to file a complaint by phone, in writing, or in person with the Department of Public Health (DPH) against a nursing home (H&S Code §1419(d))
- DPH shall notify the complainant of the assigned inspector's name within 2 working days of the receipt of the complaint (H&S Code §1420(a)(1))
 - Onsite investigations must begin within 10 working days of receipt of the complaint (H&S Code §1420(a)(1); CANHR v DHS, San Francisco Superior Court, Case # CPF-05-505749, Order for Writ of Mandate, 9/27/06)
 - DPH shall complete investigations of complaints received on or after July 1, 2018 within 60 days of receipt and notify the complainant in writing of its findings upon completion (H&S Code §1420(a)(5)(A))
- Right to contact and receive information from agencies acting as client advocates (42 CFR §483.10(g)(10)(ii))

Resident Resources

- Local Ombudsman: https://theconsumervoice.org/get_help/state_resources/ca
- CA Department of Public Health:
 - Cal Health Find: <https://www.cdph.ca.gov/Programs/CHCO/LCP/calhealthfind/pages/home.aspx>
 - Facility Search (list of Medi-Cal facilities)
 - Filing a Complaint
 - Directory of Local Offices: <https://www.cdph.ca.gov/Programs/CHCO/LCP/Pages/DistrictOffices.aspx>
- Department of Health Care Services Transfer Discharge & Refusal to Readmit Unit: **(916) 445-9775** or **(916) 322-5603**
- Medi-Cal Eligibility Booklet: http://canhr.org/publications/PDFs/MEB_Eng.pdf

Thank you!! Questions?

- We are open Monday - Friday, 9am - 5pm. Phone lines are off from 12-1pm for lunch.
- CANHR Website: www.canhr.org
- Email CANHR: <http://canhr.org/bnbform.html>
- Call Us: 1(800)474-1116 or (415)974-5171
- CANHR Lawyer Referral Service: <http://www.canhr.org/LRS/GetALawyer>