

Transfer and Discharge Rights of Residents in Long Term Care Facilities

**A Guide for Hospital Social Workers, Discharge
Planners, and Advocates**

WISE & HEALTHY AGING

**LONG-TERM CARE
OMBUDSMAN PROGRAM**
COVERING CITY AND COUNTY OF LOS ANGELES

Transfer and Discharge Rights of Residents in Long Term Care Facilities

Purpose: To assist the hospital social worker, discharge planner, and advocates in the event that a facility refuses to readmit a resident back to the facility of origin; to provide the transfer and discharge rights of residents of Skilled Nursing Facilities (SNF) and Residential Care Facilities for the Elderly (RCFE).

I. Skilled Nursing Facility (SNF) Residents

Bed Hold Policy:

- Prior to hospital transfer, skilled nursing facility must issue a written notice to the resident and/or representatives of his/her rights to readmission at the end of the transfer, including the duration of the bed hold policy. (42 CFR 483.15 (d) (1-2))
- Residents on Medi-Cal are entitled to a 7 day bed hold, paid for by Medi-Cal.
- After the 7 day bed hold period lapses, resident's receiving Medi-Cal have the right to return to the next available bed (42 CFR 483.15(e)(1)).
- Non-Medi-Cal residents may be requested to pay for all days of bed hold if they indicate desire to return to facility after hospitalization.
- Residents who reside in the facility for less than 30 days-this does not relieve the facility of their obligation to issue a bed hold policy notice and or transfer/discharge notice.

Failure to Readmit:

- If the physician indicates that the resident has stabilized and is capable of returning to the same level of care, the facility of origin should accept that individual back.
- If a resident is transferred to the hospital for psychiatric evaluation and the physician determines that the resident can return to the same level of care, then the facility may not refuse to readmit the resident on the basis that they cannot meet the needs of the resident.
- The facility's refusal to readmit a resident after hospitalization shall be treated as an involuntary transfer under federal law. The rights and procedures that apply to appeals of transfers and discharges of skilled nursing facility residents shall apply to the resident's appeal of facility's involuntary transfer.

Legal reasons for transfer/discharge (SNF)

The facility may not use the hospital to circumvent the eviction process, even if the facility has a legal reason for a transfer/discharge. The facility must adhere to the proper procedure and must readmit the resident from the hospital. The facility can only then proceed with the proper eviction procedure, which includes providing a 30 day written notice, citing one of the below legal reasons for transfer/discharge. This allows the resident to return to facility and exercise their right to an appeal.

- 1) The needs of the resident cannot be met at the facility and the resident's welfare is at risk if they were to stay; i.e. the resident needs a higher level of care, subacute care, or a secured unit due to wandering behavior.
(42 CFR 483.15 (c)(1)(A))
- 2) The resident's health has improved and they no longer require the services provided by the facility; i.e. the resident requires a lower level of care.
(42 CFR 483.15 (c)(1)(B))
- 3) The safety of other individuals is endangered by the retention of the resident.
(42 CFR 483.15 (c)(1)(C))
- 4) The health of other individuals is endangered by the retention of the resident.
42 CFR 483.15 (c)(1)(D)
- 5) The resident, after appropriate notice, has failed to pay. (42 CFR 483.15 (c)(1)(E))
- 6) The facility ceases to operate. (42 CFR 483.15 (c)(1)(F))

What can be done when a SNF fails to readmit?

If you have determined, or you have a question about the resident's right to return to the facility, you may take the following actions:

- Let the facility staff know that you understand the resident's right to return to the facility. Let them know that you will assist the resident in exercising their right to an appeal hearing with the Department of Health Care Services (DHCS), Office of Administrative Appeals. Often times this is the only step that will need to be taken to get the resident readmitted to the facility.
- Contact the Department of Health Care Services (DHCS), Office of Administrative Appeals and specifically request a "readmission hearing", a.k.a. an appeals hearing. If the resident is not eligible for Medi-Cal to reimbursement for their hospital stay, and has no way of paying for their stay, then the resident is entitled to an "**expedited appeal**," with the hearing decision made 48 hours after the request is made (CA Health & Safety Code 1599.1 (h)). Be sure to request an expedited appeal if you think the resident is entitled to one.

- You may also contact the Long-Term Care Ombudsman program to find out which local Department of Public Health Licensing and Certification (DPH) office should be contacted to make a complaint against the facility for violating transfer discharge rights. DPH is the agency that enforces the appeal decisions made by the DHCS Office of Administrative Appeals with daily penalties.
- The local Ombudsman program can be contacted to assist in requesting the appeal for those resident's that can consent to Ombudsman intervention, who have a representative who can consent to Ombudsman intervention, or those who do not have a representative. The Ombudsman is available to consult with hospital staff, residents and family members, to help guide them through the process.
- The Ombudsman will attend appeals hearings at the invitation of the resident or legal representative, and can assist in asserting the rights of the resident at the hearing.
- The Department of Health Care Services Office of Administrative Appeals at the State level will schedule the hearing at 916-322-5603. The hearing will take place at the hospital. Residents generally win these appeals.

II. Residents of Residential Care Facilities for the Elderly (RCFE)

(a.k.a. board and care, assisted living facilities- regardless of facility size)

The facility may not use the hospital to circumvent the eviction process, which includes providing a 30 day written notice with a legal reason for eviction. Further, the resident is not required to vacate the premises until a ruling has been made in an unlawful detainer action, if the resident is in disagreement with the eviction.

Legal Reasons for Transfer/Eviction Notices (RCFE):

(Title 22 Section 87224)

1. Nonpayment of the rate for basic services within ten days of the due date.
2. Failure of the resident to comply with state or local law after receiving written notice of the alleged violation.
3. Failure of the resident to comply with general policies of the facility. Said general policies must be in writing, must be for the purpose of making it possible for residents to live together and must be made part of the admission agreement.
4. If, after admission, it is determined that the resident has a need not previously identified and a reappraisal has been conducted pursuant.
5. Change of use of the facility.

What can be done when a RCFE fails to readmit?

- If a resident's physician has indicated that the resident can return to the same level of care, and the resident does not suffer from any of the attached prohibited health conditions, then the resident has a right to return to the facility.
- Residents have a right to return to the facility assuming that they have not intentionally given up their room at the facility.
- Residents do not have bed hold protections in that they pay month to month and have paid for their bed a month in advance. If a resident intends to return to the facility, they should continue to pay their rent.
- If a facility refuses to readmit a resident, a complaint can be made to Community Care Licensing, Centralized Complaint Unit at (844)-538-8766. Community Care Licensing has 10 days to open a complaint investigation.
- An additional telephone report to the local Ombudsman office is also recommended to assist with negotiations with the facility and with licensing to assist with the assertion of the resident's right to return to the facility. Consent from resident or their legal representative is required for Ombudsman to intervene.

III. Ensuring that Residents are Transferred to a Licensed Care Facility

If a resident requires care and supervision and facility placement is prescribed, you can ensure that residents are being transferred to licensed facilities by checking the facility's licensing status. You may do this by contacting your local Ombudsman program or by going to the following web sites:

For Board and Care or Assisted Living Facilities- visit Community Care Licensing's web site and follow these steps:

www.cclid.ca.gov

- "Senior Care"
- "Find Licensed Care"
- Select the facility type to locate- i.e.; "Residential Care Facility for the Elderly"
- Enter a zip code, city or county and select search

For a Skilled Nursing Facility- licensed facility information can be found on two websites:

1. Cal Health Find – CA Department of Public Health
<https://www.cdph.ca.gov/programs/chcq/lcp/calhealthfind/pages/home.aspx>

2. Nursing Home Compare – Medicare

www.medicare.gov

- Select “Compare Nursing Homes in your area”
- Search for nursing home by entering a city or zip code and select search

IV. Important Phone Numbers

Community Care Licensing Division

(844)-538-8766 intake phone

(916)-651-6668 intake fax

LetUsNo@dss.ca.gov intake email

Department of Public Health (headquarters - to determine local office)

(562)-345-6852 phone

(562)-409-5096 fax

Department of Health Care Services Office of Administrative Appeals

(916)-322-5603 phone

(916)-323-4477 fax

Fair Housing; State Department of Fair Employment & Housing (for complaints against unfair housing practices, including in community based long-term care settings)

800-233-3212

WISE & Healthy Aging Long-Term Care Ombudsman Program

800-334-9473 intake phone

800-231-4024 after hours Crisis Line

www.wiselandhealthyaging.org



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Residential Care Facilities for the Elderly

Health Condition	Reference	Allowed	Prohibited
Bedridden	87455	Secure and maintain appropriate bedridden fire clearance through CCL; notify local fire jurisdiction. Additional conditions must be met.	
Bedridden due to temporary illness or recovery from surgery	87455	Bedridden fire clearance. If beyond 14-days, extension authorized by CCL. Additional conditions must be met.	
Catheter, indwelling urinary	87623	Self-care except for insertion and irrigation done by appropriately skilled professional (ASP). Trained staff may empty catheter bag.	
Colostomy/ileostomy care	87621	Self-care. Assistance by ASP. Ostomy bag and adhesive changed by trained staff.	
Condition requiring 24-hour, skilled nursing or intermediate care	87455		X
Contractures	87626	Self-care. Needed care and supervision by ASP.	
Dermal Ulcers, Stage 1 and 2 (Healing Wounds)	87631	Care by or under supervision of ASP.	
Dermal Ulcers, Stage 3 and 4 (Pressure Sore)	87615		X
Diabetes, insulin-dependent	87628	Self-administer or assisted by ASP.	
Fecal impaction removal, enemas and/or suppositories	87622	Self-care or assisted by ASP.	
Gastrostomy Care	87615		X
Incontinence or bowel and/or bladder training (Managed incontinence)	87625	Self-care; structured retraining program; scheduled toileting and/or use of incontinent care products.	
Injections	87629	Self-administer or assisted by ASP.	
Intermittent Positive Pressure Breathing (IPPB) Machine	87619	Self-care or assisted by ASP.	
Naso-gastric tubes	87615		X
Postural support	87608	Devices must not restrict movement, including but not limited to, falling out of bed or chair. Must be physician prescribed and self-releasing by resident.	
Oxygen administration, gas and liquid	87618	Prior approval from CCL needed. Self-care or intermittent administration by ASP.	
Staph or other serious, communicable infection	87615		X
Total care – Residents who depend on others to perform all activities of daily living	87459		X
TB, active, communicable	87455		X
Tracheostomies	87615		X