

Elders & Disabled Adults Discharged to Homeless Shelters from Long Term Care Facilities

A Guide for Homeless & Emergency Shelter Operators, 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 homeless and emergency shelter (shelter) operators when a long-term care facility sends an elderly or disabled adult (resident) to shelter who needs care, supervision, or medical treatment that your shelter cannot provide.

Skilled Nursing Facilities (SNF) and Residential Care Facilities for the Elderly (RCFE) have an obligation to ensure that their residents are involved in the planning for a safe transfer or discharge.

- Resident must agree to the transfer to a shelter
- Resident must be given 30-day notice
- There are only a few reasons for a transfer discharge
- Resident's doctor determines level of care needs
- The facility must transfer the resident to that level of care
- A resident can leave a facility against medical advice and then self-select coming to a shelter

Skilled Nursing Facility Legal reasons for transfer/discharge

The facility may not discharge a resident to a shelter without their consent. The facility must adhere to the proper procedure. The facility can only proceed with the proper eviction procedure, which includes providing a 30 day written notice, citing one of the below legal reasons for transfer/discharge. (42 CFR 483.15 (c)(1)(i)(A-F))

- 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.
- 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.
- 3) The safety of other individuals is endangered by the retention of the resident.
- 4) The health of other individuals is endangered by the retention of the resident.
- 5) The resident, after appropriate notice, has failed to pay.
- 6) The facility ceases to operate.

What can I do when a SNF transfers a resident to shelter?

- Contact the facility that transferred the client and try and negotiate them back in. Let the facility know that the clients care needs are not manageable in shelter. Be specific (i.e. the resident can't take their own medication, needs help toileting)

- Let the facility know that residents have a right to a safe, and orderly transfer/ discharge, which includes transfer to the appropriate care level.
- Let the facility staff know that you understand the resident's transfer discharge rights and 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.
- Contact the Department of Public Health Licensing and Certification (DPH) office 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.
- Contact the Ombudsman program to assist in exploring the discharge, negotiating to get the resident back to the SNF, and requesting the appeal for those resident's that can consent to Ombudsman intervention, who have a representative who can consent, or those who do not have a representative. The Ombudsman can attend appeals hearings at the invitation of the resident and assist in asserting the rights of the resident at the hearing.
- The Ombudsman is available to consult with shelter staff, residents and family members, to help guide them through the process.
- The Department of Health Care Services Office of Administrative Appeals at the State level will schedule the hearing 916-322-5603. The hearing will take place at the facility. Residents generally win these appeals.

Residential Care Facilities (RCFE) Legal Reasons for Transfer/Eviction:

(A.k.a. board and care, assisted living facilities) (Title 22 Section 87224)

The facility may not transfer a resident to shelter without their consent. The facility must provide a 30 day written notice with a legal reason for eviction. If the resident is in disagreement with the eviction the resident is not required to vacate the premises until a ruling has been made in an unlawful detainer action. There are only five reasons for transfer/eviction.

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. Policies must be in writing, for the purpose of making it possible for residents to live together and 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 I do when a RCFE transfers a resident to shelter?

- If rent has been paid for the month then a resident has a right to return to the facility, assuming they have not intentionally given up their room. If the resident has not been given notice and/or they need a higher level of care than a shelter then contact the facility to negotiate them back in.
- If a facility refuses to readmit a resident, a complaint can be made to Community Care Licensing, Centralized Complaint Unit at (844)-538-8766.
- Contact the Ombudsman office 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.

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)
(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

Long-Term Care Ombudsman Program at WISE & Healthy Aging
(800)-334-9473 intake phone
(800)-231-4024 after hours Crisis Line
www.wiseandhealthyaging.org