



Protect Nursing Facility Residents from Improper Discharge (HB 2285)

Summary and Background Information

A resident's right to not be improperly discharged is protected by federal law. Administrative penalties for violating these laws are set by the State. The current penalty amount is not a sufficient deterrent, and many providers are willing to pay the small fine for violating a resident's discharge rights. Ombudsman investigations of many discharge cases reveal there is no clinical or legal basis for discharge, making them improper and illegal.

Improper discharge often results in negative physical and psychological outcomes for residents, including disrupting residents' continuity of care and distancing them from family and friends who could visit and advocate for them. Improper discharge may create a chain reaction of placements in one facility after another. Further, some improper discharges are so dangerous to the resident that intervention of Adult Protective Services (APS) or law enforcement is required, such as when a facility takes a resident to an unsafe community home, an unlicensed facility, a homeless shelter, or a motel.

Providers should be incentivized to care for the residents they accepted into their nursing facilities and follow state and federal requirements, instead of improperly discharging residents because they might only face a small fine.

Common Examples of Improper Discharge

1. A facility retaliates against a resident who frequently complains by discharging the resident. HHS Regulatory cites the facility for the violation, but the facility is willing to pay the fine rather than readmitting the resident.
2. A resident is discharged from a facility, appeals the discharge through the state fair hearings process, and the hearings officer sides with the resident and orders the resident's return. However, the facility refuses to readmit the resident as required by law. The facility administrator says she would rather be cited by HHS Regulatory than readmit the resident.
3. A facility transfers a resident to a hospital and refuses to readmit the resident after hospital treatment. This practice is sometimes referred to as "patient dumping", and is illegal and well known among hospital and nursing facility providers. The facility does not see a potential HHS Regulatory citation as an incentive to readmit the resident and comply with state and federal requirements.

Scope of Problem

Ombudsmen investigated 500 discharge complaints in 2017 and 577 discharge complaints in 2018, which is the 9th most prevalent of complaints investigated by ombudsmen.

HHS Regulatory Services investigated 844 complaints related to admission and discharge in 2017 and 730 complaints in 2018.

Incentivizing facilities to reduce improper discharge practices would benefit the quality of care and life for residents and their families, as well as reduce burden on APS or other protective services which may have to assist during improper discharges to unsafe locations.

Proposed Statutory Solution

Amend Health and Safety Code §242.066 by creating a tiered administrative penalty structure for violations related to nursing facility discharge. Penalties increase with length of non-compliance. A facility demonstrating non-compliance related to a discharge requirement for no more than seven calendar days is subject to a Tier I penalty of no less than \$2,000 per day for each violation. A facility demonstrating non-compliance related to a discharge requirement for more than seven calendar days and no more than 14 calendar days is subject to a Tier II penalty of no less than \$4,000 per day for each violation and removal of the right to correct each violation. A facility demonstrating non-compliance related to a discharge requirement for more than 14 calendar days is subject to a Tier III penalty of no less than \$6,000 per day for each violation, removal of the right to correct each violation, and suspension of new admissions until the facility comes into compliance.

Contact Information

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