

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Jasmeet Bains, Chair

AB 1309 (Reyes) – As Introduced February 16, 2023

**SUBJECT:** Long-term health care facilities: admission contracts.

**SUMMARY:** Requires reasonable notice in writing and transfer and discharge planning for residents in a long-term health facility. Specifically, **this bill:**

- 1) Requires a contract of admission to state that with exception of an emergency, a resident may not be involuntarily transferred within or discharged from, a long-term health facility, unless the resident is given reasonable notice in writing and transfer or discharge planning.
- 2) Mandates written notice to state the reason for transfer or discharge, including specific facts to determine the reason for the transfer or discharge.
- 3) Notifies the Office of the State Long-Term Care Ombudsman (LTCO) in every case of involuntary discharge.

**EXISTING LAW:**

- 1) Establishes the California Department of Public Health (DPH), which, among other functions, licenses and regulates skilled nursing facilities (SNF) and Intermediate Care Facilities (ICF). Defines SNFs as health facilities that provide skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis, and ICFs as health facilities that provide inpatient care to ambulatory or non-ambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require the availability of continuous skilled nursing care. (HSC §1250 (c) and (d))
- 2) Establishes a civil penalty structure for long-term care (LTC) facilities, including SNFs and ICFs, categorized into “AA,” “A,” and “B” violations:
  - a) “A” violations are those which DPH determines the violation presents either imminent danger of death or serious harm, or a substantial probability that death or serious harm to residents would result;
  - b) “AA” violations (the most severe) are those that meet the criteria for a class “A” violation that DPH determines was a substantial factor (as defined) in the death of a resident of an LTC facility; and.
  - c) “B” violations are those that DPH determines have a direct or immediate relationship to the health, safety, or security of LTC facility residents. (HSC §1424)
- 3) Establishes, within the Older Americans Act (OAA), the Office of the LTCO Program and requires states to establish and operate a LTCO for the purpose of identifying, investigating,

and resolving complaints that may adversely affect the health, safety, welfare, or rights of residents of long-term care facilities. (*42 USC § 3058(g)*)

- 4) Establishes the Office of the State LTCO under the California Department of Aging (CDA), for the purpose of protecting and advocating for the rights and health and safety of long-term care facility residents, and in providing leadership, direction, and support to local LTCO programs. (*WIC § 9700 et seq.*)
- 5) Defines “long-term health care facility” to mean a skilled nursing facility (SNF); intermediate care facility (ICF), including an ICF for individuals with developmental disabilities, as specified, a congregate living health facility; a nursing facility, and a pediatric day health and respite care facility. Specifies that a “long-term health care facility” does not include a general acute care hospital or acute psychiatric hospital, as specified. (*HSC § 1418*)
- 6) Defines “long-term care facility,” for purposes of establishing the role of the State LTCO, to mean a nursing facility or SNF, including distinct parts of facilities that are required to comply with licensure requirements for SNFs, or a residential care facility for the elderly (RCFE.) (*WIC § 9701*).
- 7) Develops person-centered baseline care plans; comprehensive care plans and discharge plans. (*42 CFR § 483.21 et seq.*)
- 8) Mandates in residential care for the elderly (RCFEs), eviction notices must include “specific facts to permit determination of the date, place, witnesses, and circumstances concerning” the reason for discharge. (*HSC § 1569.683(a)*)

**FISCAL EFFECT:** This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

**Author’s Statement:** “AB 1309 requires that notices to nursing home residents regarding reasons for their transfer or discharge include additional details, and specific facts to permit determination of the date, place, witnesses, and circumstances concerning the reason for their transfer or discharge. One of the most common complaints received by California’s Long-Term Care Ombudsman programs is related to evictions. Due to the vulnerability of our nursing home residents, it is completely unacceptable for them to not know why they are being turned away from care, because this leaves them and their loved ones unable to fight for their ability to stay. This bill is intended to discourage facilities from pursuing unwarranted evictions, prompt residents to appeal their evictions, and enhance the quality of resident appeals.”

**BACKGROUND**

California’s aging population is growing faster than any other age group. By 2030, over 25 percent of the population in California will be 60 and older.<sup>1</sup> The population in the state is becoming more racially and ethnically diverse, and yet the COVID-19 pandemic impacted Californians disparately.

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<sup>1</sup> [Projections | Department of Finance \(ca.gov\)](https://www.cdpr.ca.gov/Programs/OPA/Pages/NR20200001.aspx)

**Skilled Nursing Facilities:** SNFs are health facilities that provide skilled nursing care and supportive care to patients whose primary need is for skilled nursing care on an extended basis. ICFs are health facilities that provide inpatient care to ambulatory or nonambulatory patients who have recurring needs for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care. As health care facilities, SNFs and ICFs are licensed and overseen by CDPH. ICFs for Individuals with Intellectual Disabilities (ICF/IID) are also health facilities licensed by CDPH to provide 24-hour residential habilitative or nursing services. ICF/IIDs are approved by the Department of Developmental Services (DDS) prior to CDPH licensure. SNFs and ICFs are under the purview of the Assembly Committee on Health.

**Office of the State Long-Term Care Ombudsman (LTCO):** Under the federal OAA, each state is required to operate an Office of the State LTCO, which is charged with identifying, investigating, and resolving complaints that are made by, or on behalf of, residents of long-term care facilities. In California, the Office of the LTCO is housed under CDA. The State LTCO and their local representatives assist residents in long-term care facilities with issues related to day-to-day care, health, safety, and personal preferences, including investigating abuse and violations of residents' rights or dignity, and other issues regarding quality of care.

The LTCO has oversight responsibility for 35 local Ombudsman programs throughout California. Approximately 216 paid staff and 717 certified volunteers advocate on behalf of residents of LTC facilities. These facilities include 1230 skilled nursing and intermediate care facilities, and 7307 RCFEs, with a combined count of 308,011 LTC beds.<sup>2</sup>

The third ranking complaint relating to resident's rights taken by the LTCO relates to transfers discharges, and evictions, with the following number of complaints per year: 2,365 (FY 2017-18), 2,094 (FY 2018-19) and 2,077 (FY 2019-20).<sup>3</sup>

**Master Plan for Aging:** In January of 2021, the Governor released his Master Plan for Aging (MPA). The MPA prioritizes the health and well-being of older Californians and the need for policies that promote healthy aging. The MPA serves as a blueprint for state government, local government, the private sector, and philanthropy to prepare the state for the coming demographic changes and continue California's leadership in aging, disability, and equity.

After work began on the MPA, the COVID-19 pandemic reached California. The virus disproportionately harmed older and other at-risk adults, and it strained aging and disability services that were perpetually underfunded. Worldwide, older adults have experienced unprecedented death rates. California's diverse population saw disproportionate numbers, particularly among Latino, Black and Asian Pacific Islander communities and those living in nursing homes. The pandemic intensified social isolation.

The work plan laid out in the MPA two years after its release continues to highlight the urgent needs facing California's older adults, people with disabilities, their families, advocates and the workforce supporting these populations.

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<sup>2</sup> [https://aging.ca.gov/Providers\\_and\\_Partners/Long-Term\\_Care\\_Ombudsman/Program\\_Narrative\\_and\\_Fact\\_Sheets/](https://aging.ca.gov/Providers_and_Partners/Long-Term_Care_Ombudsman/Program_Narrative_and_Fact_Sheets/)

<sup>3</sup> <https://aging.ca.gov/download.ashx?IE0rcNUV0zbv53edF4WiJg%3d%3d>

The MPA outlines five bold goals, 23 strategies and currently seeks to advance 95 initiatives to build a California for All Ages by 2030. It also includes a Data Dashboard on Aging to measure progress. AB 1309 can be linked to all of the goals:

- Goal One: Housing for All Ages and Stages
- Goal Two: Health Reimagined
- Goal Three: Inclusion and Equity, Not Isolation
- Goal Four: Caregiving That Works
- Goal Five: Affording Aging

***Current realities of SNF transfers or discharges:***

According to the California Association of Health Facilities, the following are the only allowable reasons for discharge:

- 1) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- 2) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- 3) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- 4) The health of individuals in the facility would otherwise be endangered;
- 5) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or,
- 6) The facility ceases to operate.

There is no standard form, but they are all required to have the same information as required by Center for Medicare and Medicaid Services (CMS)

Federal law currently requires nursing homes to document the reason and basis for resident evictions in great detail, but is not explicitly required to share that documentation with the resident.

In Residential Care Facilities for the Elderly (RCFEs), eviction notices must include “specific facts to permit determination of the date, place, witnesses, and circumstances concerning” the reason for discharge. There is currently no parity for residents in SNFs

**Committee amendments:** Lengthy discussions between committee staff, the sponsor, California Advocates for Nursing Home Reform (CAHNR), CAHF and the author's staff have resulted in the following amendments (proposed language is underlined). These amendments reflect the most recent mediations to come to a reasonable solution for some of the state's most vulnerable residents. Amends are as follows:

**SECTION 1.** Section 1599.78 of the Health and Safety Code is amended to read:

(a) A contract of admission shall state that except in an emergency, a resident may not be involuntarily transferred ~~within~~ or discharged from, a long-term health care facility unless the resident and, if applicable, the resident's representative, is given reasonable notice in writing and transfer or discharge planning as required by law. The written notice shall state the reason for the transfer or discharge. ~~discharge, including specific facts to permit determination of the date, place, witnesses, and circumstances concerning the reason for the transfer or discharge.~~

(b) Within 48 hours of giving the written notice required in subsection (a), the facility shall provide the resident and, if applicable, the resident's representative, a copy of the following:

(i) the evaluation of the resident's discharge needs and discharge plan as required by federal law and regulations or the most current discharge care plan; and

(ii) in the case of the transfer or discharge being necessary for the resident's welfare and the resident's needs cannot be met in the facility, a written description of the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s) as required by federal law and regulations if this information is not included in the most current discharge care plan.

(iii) The documents and information do not have to be provided to the resident and, if applicable, the resident's representative if the resident and resident representative request they not be provided or if no discharge is proposed.

(c) Prior to the proposed transfer or discharge date, the facility shall provide the resident and, if applicable, the resident's representative, a copy of the resident's discharge summary required by federal law and regulations. The documents and information do not have to be provided to the resident and, if applicable, the resident's representative if the resident and resident representative request they not be provided or if no discharge is proposed.

(d) Any documents provided to the resident and, if applicable, the resident's representative, pursuant to this section shall be at no cost to the resident and, if applicable, the resident's representative.

(e) If a transfer or discharge appeal hearing is requested by the resident or, if applicable, the resident's representative, the facility shall provide the resident or the residents' representative the opportunity to examine at a reasonable time before the date of the hearing, absent exigent circumstances, and during the hearing all documents and records to be used by the facility at the hearing as required by federal law and regulations. The resident or, if applicable, the resident's representative, shall provide the facility the opportunity to examine at a reasonable time before the date of the hearing, absent exigent circumstances, and during the hearing all documents and records to be used by the resident or, if applicable, the resident's representative at the hearing.

(f) The facility shall ~~immediately~~ promptly notify the Office of the State Long-Term Care Ombudsman in every case of involuntary discharge as specified in Section 1439.7.

**Argument in Support:** The California Advocates for Nursing Home Reform (CANHR), the sponsor of AB 1309 writes, “Nursing homes provide vital housing and care to about 450,000 residents each year, many of whom are medically fragile and disabled. There are only about 100,000 nursing home beds in California, which means there are roughly 350,000 evictions annually. Because of the extensive and complex care needs of nursing home residents, moving them out requires careful advance planning and coordination to ensure they end up in a place that is safe, appropriate, and stable. Bad evictions are those that are not careful or coordinated or end with the resident in an unsafe, inappropriate, or unstable place. These evictions sometimes mean residents with significant care needs are dumped into motels, homeless shelters, or the streets.”

The Office of the State Long Term Care Ombudsman Program also writes in support “In 2022, the Long-Term Care Ombudsman program received more than 2,000 complaints related to resident discharges or evictions. A significant proportion of these complaints were determined to be associated with inadequate or poorly substantiated eviction notices presented to nursing home residents. AB 1309 would require nursing homes to provide the same level of detail to justify a resident eviction that is required of RCFEs, allowing residents to better defend against inappropriate and unsafe evictions.”

**Arguments in Opposition:** None.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Advocates for Nursing Home Reform (sponsor)  
 AARP  
 California Commission on Aging  
 California Long-term Care Ombudsman Association  
 California Office of The State Long-term Care Ombudsman  
 California Retired Teachers Association  
 Choice in Aging  
 Consumer Attorneys of California  
 Disability Rights California  
 Gray Panthers of San Francisco  
 Justice in Aging  
 Senior Advocacy Services  
 The Geriatric Circle

Several individual letters

### **Opposition**

None on file.

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