
SENATE COMMITTEE ON HEALTH
Senator Dr. Susan Talamantes Eggman, Chair

BILL NO: AB 1309
AUTHOR: Reyes
VERSION: April 27, 2023
HEARING DATE: June 21, 2023
CONSULTANT: Vincent D. Marchand

SUBJECT: Long-term health care facilities: admission contracts

SUMMARY: Requires nursing homes, within 48 hours of giving a required written notice of an involuntary transfer or discharge, to provide the resident with a copy of certain discharge related documents, including a description of specific needs that cannot be met and the facility's attempts to meet those needs when the basis of the transfer or discharge is because the resident's needs cannot be met in the facility.

Existing state law:

- 1) Licenses and regulates health care facilities by the California Department of Public Health (CDPH), including long-term health care (LTC) facilities, which are defined, in part, as skilled nursing facilities (SNFs), intermediate care facilities (ICFs), and congregate living health facilities. [HSC §1250 et seq., §1418]
- 2) Requires all contracts of admission to LTC facilities to state that except in an emergency, a resident cannot be involuntarily transferred within, or discharged from, the facility unless the resident is given reasonable notice in writing and transfer or discharge planning as required. Requires the written notice to state the reason for the transfer or discharge, and requires the facility to immediately notify the Office of the State Long-Term Care Ombudsman (LTC Ombudsman) in every case of involuntary discharge, as specified. [HSC §1599.78]
- 3) Requires an LTC facility, if a resident is notified in writing of a facility-initiated transfer or discharge, to also send a copy of the notice to the local LTC ombudsman at the same time the notice is provided to the resident. Requires the facility, if the resident is subject to a facility-initiated transfer to a general acute care hospital on an emergency basis, to provide a copy of the notice to the LTC ombudsman as soon as practicable. Requires the copy of the notice to be sent by fax machine or email, as directed by the local LTC ombudsman, unless the facility does not have fax or email capability, in which case the copy of the notice is required to be sent by mail. [HSC §1439.6]
- 4) Prohibits an LTC facility that participates as a provider under the Medi-Cal program from seeking to evict out of the facility, or transfer within the facility, any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal, except that a facility is permitted to transfer a resident from a private room to a semiprivate room. [WIC §14124.7]

Existing federal law:

- 1) Prohibits LTC facilities that participate in the Medicaid or Medicare program from transferring or discharging a resident from the facility unless under one of the following conditions:

- a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - b) 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;
 - c) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
 - d) The health of individuals in the facility would otherwise be endangered;
 - e) The resident has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility. Specifies that 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,
 - f) The facility ceases to operate. [42 CFR §483.15(c)]
- 2) Prohibits an LTC facility from transferring or discharging a resident while an appeal is pending, as specified, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. Requires the facility to document the danger that failure to transfer or discharge would pose. [42 CFR §483.15(c)]

This bill:

- 1) Requires an LTC facility, within 48 hours of giving a required written notice of an involuntary transfer or discharge, to provide the resident, and if applicable, the resident's representative, a copy of all of the following:
 - a) The evaluation of the resident's discharge needs and discharge plan as required by federal law or the most current discharge plan; and,
 - b) In the case of the transfer or discharge being necessary for the resident's welfare because the resident's needs cannot be met in the facility, all of the following information (if not included in the most current discharge plan): a written description of the specific resident's needs that cannot be met; facility attempts to meet the resident's needs; and, the services available at the receiving facility that meet the resident's needs.
- 2) Requires an LTC facility, prior to the proposed transfer or discharge date, to provide the resident and, if applicable the resident's representative, a copy of the resident's discharge summary.
- 3) Requires any documents provided to the resident and the resident's representative to be at no cost to the resident or resident's representative.
- 4) Permits the documents 1) and 2) above to not be provided if the resident or representative requests that they not be provided or if no discharge is proposed.
- 5) Requires the LTC facility, if a transfer or discharge appeal hearing is requested by the resident or resident's representative, to provide the resident or 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. Requires a resident or resident's representative to provide the facility the same opportunity to examine all documents and records to be used by the resident at the hearing.
- 6) Specifies that the provisions of this bill are intended to be consistent with federal law and regulations.

FISCAL EFFECT: According to the Assembly Appropriations Committee, CDPH anticipates minor and absorbable costs.

PRIOR VOTES:

Assembly Floor:	76 - 0
Assembly Appropriations Committee:	15 - 0
Assembly Aging and Long Term Care Committee:	7 - 0

COMMENTS:

1) *Author’s statement.* According to the author, this bill requires that nursing home residents are provided with additional documentation on the basis of their transfer or discharge. One of the most common complaints received by California’s LTC 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.

2) *Background.* Federal requirements already require nursing homes to create the documentation that this bill is requiring to be provided. Under federal requirements, a facility is required to have a discharge summary, and requires the summary to include a recapitulation of the resident’s stay that includes diagnoses and course of treatment, a final summary of the resident’s status, reconciliation of all pre-discharge medications with post-discharge medications, and a post-discharge plan of care that is developed with the resident or resident’s representative that is required to indicate where the individual will reside and what arrangements have been made for the resident’s care. Additionally, federal regulations require, when a facility transfers or discharges a resident under any of the allowed circumstances (as detailed in existing federal law 1) above), that the facility document in the resident’s medical record the basis for the transfer, and in the case of not being able to meet a need, what that specific need is and the facility’s attempts to meet the need and the service available at the receiving facility that will meet the need.

However, while facilities are required to include the reason for the transfer or discharge as part of the required notice of transfer or discharge, it doesn’t explicitly require that the specific need that the facility claims it is unable to provide be part of the notice provided to residents, nor what steps were taken to attempt to meet the resident’s needs, despite this information being required to be documented in the medical record. According to the author and sponsor, the goal of this bill is to provide resident’s and their representatives with a level of detail that the facility is already required to produce, in order for the resident to have all the information necessary in the event they wish to appeal an inappropriate transfer or discharge.

3) *Related legislation.* AB 979 (Alvarez) recasts and strengthens provisions of law governing the rights and operations of family councils at SNFs and ICFs, as well as those governing family councils at residential care facilities for the elderly (RCFEs), by, among other provisions, conforming the two sets of laws so they are more closely aligned with each other and with federal law, permitting family councils to be allowed to meet virtually or at an offsite location, and requiring written responses to requests or concerns raised by the family

councils to have detailed rationales for any action or inaction taken in response to those requests or concerns. *AB 979 is set for hearing on June 21, 2023 in this Committee.*

- 4) *Prior legislation.* AB 895 (Holden, Chapter 577, Statutes of 2022) requires SNFs and RCFEs to provide a written notice to a prospective resident, or their representative, that includes the contact information for the local LTC ombudsman, and links to specified websites governing licensing and quality of care.

AB 940 (Weber, Chapter 274, Statutes of 2017) requires a LTC facility to notify the local LTC ombudsman when a resident is notified in writing of a facility-initiated transfer or discharge from the facility.

- 5) *Support.* This bill is sponsored by California Advocates for Nursing Home Reform (CANHR), which states that because of the extensive and complex needs of nursing home residents, moving them out requires careful advance planning and coordination to ensure that 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. CANHR states that bad evictions are one of the most common complaints made about nursing homes, and cites data from the National Ombudsman Reporting system showing 2,100 complaints per year in California related to nursing home evictions. According to CANHR, almost every nursing home resident is admitted after a hospital stay, and typically has about ten to twenty days of rehabilitative services covered by Medicare, which pays a generous rate compared to other payment sources. If a person needs to stay in a nursing home for care after their Medicare coverage ends, they have to switch to a less lucrative payment source, such as Medi-Cal, which creates enormous incentives for facilities to evict residents who have exhausted Medicare coverage and replace them with new residents with fresh Medicare coverage. Because Medicare coverage terminations are usually swift with little notice, the facility tries to evict residents within that time, which is why residents are often sent home with inadequate care in place or to motels or homeless shelters. CANHR states that the only statutory and regulatory protection that empowers residents to stop unsafe evictions is the requirement that they be given written notice of the “reason for the move” and information about their right to appeal. However, a significant problem with the eviction notification laws is they leave uncertainty about the level of detail required when explaining the facility’s justification for evicting the resident. CANHR states that nearly every eviction notice given to residents lists the six reasons for evicting residents allowed under federal law, with one or more reasons checked. The notice should include details to support the cited reason, but unfortunately, these details are not expressly delineated in the law and regulations. This bill clarifies that nursing homes must share with residents the basis for evictions, and include that same level of detail that is already required for residential care facilities for the elderly. Requiring this additional information will enable residents to better defend against inappropriate and unsafe evictions on appeal.
- 6) *Suggested technical amendment.* The provisions of this bill are being added to a part of the law governing admission contracts for LTC facilities. However, a different section of law (see 3) in existing law above) already requires, when residents are notified in writing of a facility-initiated discharge or transfer, to provide notification to the local LTC ombudsman. The author may wish to consider whether the provisions of this bill, expanding on the notification of involuntary discharges and transfers, would be more appropriately placed in this section of law.

SUPPORT AND OPPOSITION:

Support: California Advocates for Nursing Home Reform (sponsor)
American Association of Retired Persons (AARP)
California Commission on Aging (CCoA)
California Long-Term Care Ombudsman Association (CLTCOA)
California Office of the State Long-Term Care Ombudsman
California Retired Teachers Association (CalRTA)
Choice in Aging
Consumer Attorneys of California
Disability Rights California (DRC)
Gray Panthers of San Francisco
Justice in Aging
Two individuals

Oppose: None received.

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