

ADMISSION RIGHTS

A. Rights regarding admissions contracts.

1. Every nursing home must use the Standard Admission Agreement developed by the California Department of Public Health (DPH).
2. Nursing home must make reasonable efforts to communicate contents of contract to resident prior to admission.
3. Contract shall not contain waivers of liability for health, rights, safety or personal property of resident.
4. Contract must clearly and explicitly state whether the facility participates in the Medi-Cal program.
5. Contract shall not require notice of resident's intent to convert to Medi-Cal Status.
6. Contract shall state clearly what services and supplies are covered by the facility's basic rate and identify charges for optional services and supplies.
7. Contract shall state that residents will receive monthly statements itemizing all charges incurred by them.
8. Contract shall not require payment beyond date of death or involuntary discharge from nursing home.
9. Contract shall not require advance notice of voluntary discharge from nursing home.
10. Contract shall not list any ground for discharge or involuntary transfer except those grounds listed in federal or state law.
11. Contract shall state that, except in an emergency, no resident may be involuntarily transferred within the facility or discharged unless reasonable written notice and transfer or discharge planning are given as required by law.
12. Contract shall not require residents to consent to all treatment ordered by a physician.
13. Contract shall not require or imply a lesser standard of responsibility for residents' personal property than is required by law.
14. Contract must contain a copy of the Patient's Bill of Rights.
15. Contract must provide that if the resident is transferred to an acute care hospital, his/her bed will be held for seven days.
16. Contract must state that the facility is required to give 30 days' written notice of any rate increase in the facility.
17. The contract must contain an attachment that discloses the name of the owner and licensee of the skilled nursing facility and the name and contact information of a single entity that is responsible for all aspects of resident care and operation at the facility.

B. Arbitration agreements.

1. Nursing home cannot require applicants or residents to sign an arbitration agreement as a condition of admission or medical treatment.
2. An arbitration agreement must be on a form separate from the admission agreement and require separate signatures.
3. A resident cannot waive his or her ability to sue for violations of residents' rights.
4. Residents and their legal representatives can rescind an arbitration agreement by giving written notice to the facility within 30 days of their signature.

C. Notice of rights.

1. Nursing home must inform the resident both orally and in writing in a language that the resident understands of his or her rights.
2. Nursing home must give the resident written information about advance directives explaining:
 - a. The right to make health care decisions.
 - b. The right to accept or refuse medical treatment.
 - c. The right to prepare an advance health care directive.
 - d. The facility's policies governing use of advance directives.

D. Right to reimbursement under Medi-Cal and Medicare programs.

1. Medi-Cal and/or Medicare certified nursing homes must not require applicant to waive rights to Medicare or Medi-Cal benefits as part of admission practice.
2. Medi-Cal and/or Medicare certified nursing homes must not require oral or written assurances that residents or potential residents are not eligible for, or will not apply for, Medicare or Medi-Cal benefits.
3. Medi-Cal and/or Medicare certified nursing homes must prominently display and provide information about how to apply for Medicare or Medi-Cal benefits and how to receive refunds for services already paid for.
4. Medi-Cal certified nursing home must give the resident, his or her spouse, and representative a state-mandated notice explaining Medi-Cal financial eligibility requirements.
5. Medi-Cal certified nursing home shall not require the resident to pay privately for any period during which the resident has been approved for payment by Medi-Cal.
6. Medi-Cal certified nursing home must submit a Medi-Cal reimbursement claim for approved beneficiaries and must return any and all payments made by the beneficiary, or any person on behalf of the beneficiary, upon receipt of Medi-Cal payment.
7. Medi-Cal and/or Medicare certified nursing homes must inform beneficiaries of Medicare and Medi-Cal covered items and services for which they may not be charged and those other items and services not covered for which they may be charged, and the amount of charges for those services.
8. If a nursing home files a notice of intent to withdraw from Medi-Cal, all residents admitted prior to the notification date have the right to remain in the facility and receive Medi-Cal payment for their care if they are eligible for Medi-Cal or become eligible.

E. Right to be free from financial pre-conditions to admission.

1. Nursing home may not require third party guarantee of payment as a condition of admission or expedited admission.
2. If individual is entitled to Medi-Cal, nursing home may not charge, solicit, accept, or receive any amount as precondition of admission, or as a requirement of continued stay.
3. Nursing home cannot require or accept a deposit if Medi-Cal or Medicare is paying for a resident's stay.

F. Right to return of security deposit.

1. When resident converts to Medi-Cal.
2. Within 14 days after account is closed.

3. No later than 14 days after the resident's death, to the heir, legatee, or personal representative.

TRANSFER AND DISCHARGE RIGHTS *(See Licensing and Certification Policy and Procedure Manual Section 618 et.seq.)*

A. Prohibitions against transfer or eviction.

1. Medi-Cal certified nursing home shall not transfer or seek to evict resident due to resident changing from private pay or Medicare to Medi-Cal.
2. Nursing home shall not seek to expel resident in retaliation for filing of complaint; attempt to evict resident within 180 days of filing of complaint against facility is rebuttably presumed to be retaliatory.
3. Medi-Cal certified nursing home shall not evict or transfer residents who have made a timely application for Medi-Cal and for whom an eligibility determination has not yet been made.

B. Right not to be transferred or discharge from facility unless:

1. Transfer or discharge is necessary to meet resident's welfare; and the resident's needs cannot be met in the facility; or
2. The resident's health has improved sufficiently so that the resident no longer needs the facility's services; or
3. The safety of individuals in the facility is endangered; or
4. The health of individuals in the facility would be endangered; or
5. The resident has failed to pay or have payment made on his/her behalf (after reasonable and appropriate notice is given); or
6. The facility ceases to operate.

C. Right to notice prior to transfer or discharge from facility.

1. A physician must document the basis for the transfer or discharge in the resident's clinical record.
2. Nursing home must give the resident, family member, and legal representative advance notice of the transfer or discharge as soon as practicable.
3. Any transfer or discharge requires 30 days written notice, except for when the health or safety of other individuals would be endangered, the resident's health improves sufficiently to allow a more immediate transfer or discharge, the resident's urgent medical needs require a more immediate transfer or discharge, or the resident has resided in the facility less than 30 days.
4. Notice of transfer or discharge must include the reason for the transfer or discharge, the effective date of the transfer or discharge, the location to which the resident will be transferred, a statement that the resident has the right to appeal and information on how to do so, and contact information for the long term care ombudsman.
5. The facility must send a copy of the transfer or discharge notice to the local long-term care ombudsman.

D. Right to appeal proposed transfer or discharge from facility.

1. Upon request by the resident or representative, the state must conduct appeal hearings that comply with federal requirements.

E. Right to preparation of residents prior to transfer or discharge.

1. Nursing home must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
2. Nursing home must develop a post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

F. Right to readmission after hospitalization.

1. Right to receive a written bed-hold notice when transferred to the hospital; nursing home must offer its next available bed to resident upon hospital discharge if it doesn't comply.
2. Right to pay to hold bed for up to 7 days during hospitalization and immediate readmission upon discharge.
3. Medi-Cal will pay to hold bed for up to 7 days for beneficiary who is hospitalized.
4. Resident on Medi-Cal has the right to be readmitted to the first available bed in a semiprivate room if the hospital stay exceeds 7 days.
5. A nursing home's refusal to readmit a resident during a bed hold will be treated as an involuntary transfer, allowing the resident the right to appeal the transfer. The resident can remain in the hospital until the final determination of the hearing officer.
6. If the resident is not on Medi-Cal and has no other source of payment, the hearing and final determination must be made within 48 hours.

G. Right to readmission after leave of absence/therapeutic leave.

1. Medi-Cal will pay to hold bed for 18 days (or more) per year for beneficiaries during leaves that are in accordance with their care plan.

H. Relocation rights during nursing home closures.

Prior to closure or changes in operation, the facility shall:

1. Provide at least 60 days written notice of an impending closure to residents, their representatives, the Department of Public Health and the long term care ombudsman. The 60-day period can be extended by up to an additional 60 days if residents' placement problems are encountered.
2. Hold a community meeting for residents and their families no later than 30 days after providing the written notice.
3. If 10 or more residents are likely to be transferred, submit a proposed relocation plan for the affected residents to the California Department of Public Health for approval or disapproval at least 30 days prior to written notification of residents. The proposed plan must also be sent to the local long term care ombudsman at the same time.
4. Notify residents and their representatives that the transfer plan is available to them free of charge upon request.
5. Take reasonable steps to transfer affected residents safely and minimize possible transfer trauma.
6. Conduct assessments of each resident's medical, nursing, social and functional needs that include recommendations for preventing or ameliorating potential adverse consequences of the transfer.

7. Evaluate the relocation needs of each resident including proximity to the resident's representative and determine the most appropriate and available type of future care and services for the resident before written notice of transfer is given to the resident or the resident's representative.
8. Give assurance that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.
9. Discuss the evaluation and medical assessment with the resident or the resident's representative and make them part of the medical records for transfer.
10. Provide an appropriate team of professional staff to assist residents and families in obtaining alternative placement.
11. At least 60 days in advance of the transfer, inform the resident or the resident's representative of alternative facilities that are available and adequate to meet resident and family needs.
12. Arrange for appropriate future medical care and services, unless the resident or resident's representative has otherwise made these arrangements.
13. Maintain an appropriate level of staffing in order to ensure the well-being of all the residents as they continue to reside in the facility.
14. Not admit any new residents on or after the date on which written notification of closure is submitted.

RIGHTS WITHIN NURSING HOME

A. Rights relating to dignity, quality of care, quality of life.

1. Right to receive the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being.
2. Nursing home must care for its residents in such a manner and in such an environment to maintain or enhance the quality of life of each resident.
3. Right to receive care to prevent bedsores and incontinence.
4. Nursing home shall employ an adequate number of qualified personnel.
5. Right to be treated with dignity.
6. Right to be free from verbal sexual, physical, and mental abuse, exploitation, involuntary seclusion and corporal punishment.
7. Right to reasonable accommodation of individual needs and preferences.
8. Right to food of sufficient quality and quantity to meet the resident's needs.
9. Right to activity program that meets residents' needs and interests.
10. Right to social services to attain or maintain the highest practicable physical, mental and psychosocial well-being.

B. Right to homelike environment and use of personal belongings.

1. Right to safe, clean, comfortable and homelike environment.
2. Right to housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable environment.
3. Right to clean bed and bath linens that are in good condition.
4. Right to private closet space.

5. Right to adequate and comfortable lighting levels in all areas.
6. Right to comfortable and safe temperature levels.
7. Right to comfortable sound levels.
8. Right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits.
9. Bedrooms must accommodate not more than four residents, must measure at least 80 square feet of space per resident in multi-resident rooms or 100 square feet in single rooms, and must have a least one window to the outside. For facilities that receive approval of constructions or reconstruction plans by State and local authorities or are newly certified after November 28, 2016, bedrooms must accommodate no more than two residents.

C. Right to make health care decisions, choose health care providers, medical records.

1. Right to choose personal attending physician.
2. Right to be given information on the name, specialty, and way of contacting the physician and other primary care professionals responsible for the resident's care.
3. Right to purchase drugs or rent or purchase medical supplies or equipment, from pharmacy or medical supplier of choice.
4. Right to participate in planning care and treatment and in changes in care and treatment.
5. Right to be informed, in advance, of changes to the plan of care.
6. Right to receive the services and/or items included in the plan of care.
7. Right to see the care plan, including the right to sign after significant changes to the plan of care.
8. Right to be informed, in advance, of the care to be furnished and the type of care giver or professional that will furnish care.
9. Right to informed consent.
10. Right to be fully informed in advance of medical care and treatment in language resident can understand.
11. Right to refuse treatment.
12. Right to formulate an advance directive.
13. Right to self-administer drugs if facility determines it is safe.
14. Right to store non-prescription medications at bedside unless contraindicated by physician or facility.
15. Right to prompt notification of resident, legal representative and family member of accident resulting in injury to resident, significant changes in resident's physical, mental or psychosocial status, or need to alter treatment significantly.
16. Right to access and copy at reasonable cost all records including clinical records.
17. Right to amend medical records.
18. Right to review and obtain copies of facility nurse staffing data.

D. Right to be free from restraint.

1. Right to be free from involuntary seclusion.
2. Right to be free from chemical or physical restraints imposed for purpose of discipline or convenience and not required to treat the resident's medical symptoms.

3. Right to be free from unnecessary drugs.

E. Right to autonomy

1. Right to choose activities, schedules, health care, and providers of healthcare services and participate in resident and family groups and other social, religious, and community activities.
2. Right to make choices about aspects of life in the facility that are significant to the resident.
3. Right to self-determination and communication with and access to persons and services inside and outside the facility.
4. Right to exercise rights as a resident and as a citizen.
5. Right to share a room with spouse.
6. Right to share a room with roommate of choice when practicable, when both residents live in the same facility and both residents consent to the arrangement.
7. Right to refuse to perform services for the facility.
8. Right to be temporarily absent from the facility.
9. Right to organize and participate in a residents' council.
10. Right to examine the results of most recent survey of facility and any plan of correction.

F. Right to privacy/confidentiality/communications/access/visitors.

1. Right to personal privacy in accommodations, medical treatment, written and telephonic communications, personal care, visits and meetings with family and resident groups.
2. Right to privacy in oral, written, and electronic communications.
3. Right to reasonable access to and privacy in use of electronic communications such as email and video communications and for Internet research.
4. Right to reasonable access to telephones and to make and receive confidential calls, including the right to retain and use a cellular phone at the resident's expense.
5. Right to send and promptly receive mail that is unopened and to have access to stationery, postage, and writing implements.
6. Right to confidential treatment of financial and medical records and to approve or refuse their release.
7. Right of immediate access to resident by federal, state, or ombudsman's representative, family members, and others who visit with the consent of the resident.
8. Right to reasonable access to any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.
9. Right to have visits from persons of the resident's choosing at any time if the resident is critically ill.
10. Right to privacy for visits by the resident's spouse, and if the spouse is also a resident, to be permitted to share a room.
11. Nursing home shall provide interpreters or other mechanisms to ensure adequate communications between residents and staff if language or communication barriers exist.

G. Right regarding transfer within nursing home.

1. Right to refuse transfer to or from a distinct part of a skilled nursing facility.
2. Right to be treated identically with respect to transfers regardless of source of payment.

3. Right to written notification, including the reason for the change, prior to room or roommate change.
4. If the resident changes to Medi-Cal payment status, a Medi-Cal certified nursing home is prohibited from room-to-room transfers because of change in payment status; however, the resident may be transferred from a private room to a semi-private room.

H. Payment rights.

1. Right not to be discriminated against based on source of payment.
2. Right to return of payment for services later paid by Medi-Cal.
3. Nursing home must inform resident of available services and related charges, including any charges for services not covered by its basic rate or not covered by Medi-Cal or Medicare.
4. Nursing home must give 30 days' written notice of any rate increase in the facility.
5. Nursing home must provide monthly statements itemizing all charges incurred by residents.
6. Nursing home cannot impose a charge for any item or service for which payment is made under Medi-Cal or Medicare, except for applicable deductible and coinsurance amounts.
7. Nursing home must not charge a resident or representative for any item or services not requested by the resident.
8. Nursing home must not require a resident or representative to request an item or service as a condition of admission or continued stay.
9. Nursing home must inform, orally and in writing, the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.
10. Nursing home must return any advance payments no later than 14 days after the resident's discharge or death to the heir, legatee, or personal representative.
11. Medi-Cal beneficiaries' right to use their share-of-cost to pay for medically necessary care not paid for by the Medi-Cal program.

I. Rights on protection of funds and property.

1. Right to manage own financial affairs; facility may not require residents to deposit their personal funds with the facility.
2. Nursing home must safeguard and account for resident's funds deposited with the facility.
3. Nursing home must convey resident's funds and final accounting to the legal representative of a deceased resident within 30 days of death.
4. Right to notification upon admission of the facility's policies and procedures to prevent theft and loss of possessions.
5. Nursing home shall reimburse resident for current value of stolen or lost property if it fails to make reasonable efforts to safeguard property.
6. Nursing home must inventory resident's personal property on admission and upon death or discharge.
7. Nursing home must update resident's inventory upon written request when items are brought into or removed from the facility.
8. Nursing home must secure resident's personal property.
9. Nursing home must mark resident's personal property.
10. Nursing home must establish theft and loss record for items worth \$25 or more.

11. Nursing home must report theft of property with a value of \$100 or more to police.
12. Nursing home must prevent misappropriation of resident property and report suspected crimes involving theft to state authorities and other entities within 24 hours.
13. Nursing home shall exercise reasonable care for the protection of the resident's property from loss or theft.
14. Nursing home must refer residents with lost or damaged dentures for dental services within 3 days, arrange for necessary transportation, and assist residents who are eligible and wish to participate to apply for reimbursement of dental services as an incurred medical expense.
15. Facility policies must identify when the loss of damage of dentures is its responsibility and prohibit charging residents in this situation.
16. Nursing home must surrender resident's personal property upon death or discharge.
17. Resident has the right to locked area for safekeeping of personal property. The nursing home must provide a lock for the resident's drawer or cabinet at the request of and at the expense of the resident or the resident's representative.

J. Lesbian, Gay, Bisexual, and Transgender Long-Term Care Facility Bill of Rights; California Health and Safety Code, Division 2, Chapter 2.45.

Except to the extent that it is incompatible with any professionally reasonable clinical judgment, it shall be unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status:

1. Deny admission to a long-term care facility, transfer or refuse to transfer a resident within a facility or to another facility, or discharge or evict a resident from a facility.
2. Deny a request by residents to share a room.
3. Where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a transgender resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request.
4. Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom available to other persons of the same gender identity regardless of whether the resident is making a gender transition or appears to be gender-nonconforming. Harassment includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom available to other persons of the same gender identity.
5. Willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns.
6. Deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted for any other resident.
7. Restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner. This section does not preclude a facility from banning or restricting sexual relations, as long as the ban or restriction is applied uniformly and in a nondiscriminatory manner.

- Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care in a manner that, to a similarly situated reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort.

Additionally, long-term care facilities shall:

- Post a statutorily prescribed notice.
- Protect personally identifiable information regarding residents' sexual orientation, whether a resident is transgender, a resident's transition history, and HIV status from unauthorized disclosure.
- Ensure staff not directly involved in providing direct care to a resident, including, but not limited to, a transgender or gender-nonconforming resident, are not present during physical examination of the provision of personal care to that resident if the resident is partially or fully unclothed with the express permission of that resident, or his or her legally authorized representative or responsible party.
- Inform all residents, including, but not limited to, LGBT residents, they have the right to refuse to be examined, observed, or treated by any facility staff when the primary purpose is educational or informational rather than therapeutic or for resident appraisal or reappraisal, and that refusal shall not diminish the resident's access to care for the primary purpose of diagnosis or treatment.

K. Notice of ownership changes.

- Within 30 days of an approved ownership change, the nursing home must send written notification to all current residents and to their primary contacts disclosing the name of the owner and licensee of the skilled nursing facility and the name and contact information of a single entity that is responsible for all aspects of resident care and operation at the facility.

L. Equal Rights Amendment.

- Rights established by federal regulations apply to all California nursing home residents, regardless of their payment source or the Medicare or Medi-Cal certification status of the nursing home.

M. Exercise of rights by surrogates.

- A resident's representative may exercise rights on behalf of the resident.
- Persons who may act as a resident's representative are a conservator, a person appointed by the resident through a durable power of attorney for healthcare or advance health care directive, a resident's next-of-kin, or other persons lawfully appointed by the resident or a court.

N. Rights of family members.

- Right to visit at any time.
- Right to participate in planning the resident's care.
- Right to be informed of residents' rights.
- Right to immediate notification of an accident resulting in injury, a significant change in the resident's condition, a need to alter treatment significantly, or a decision to transfer the resident.
- With the resident's consent, the right to be notified if a physician orders or increases an order for any antipsychotic medication.

6. Right of resident representative to be notified promptly if the resident is going to be moved to another room or if there is a change of roommates.
7. Right to organize and participate in a family council.

O. Right to exercise rights and voice grievances.

1. Right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising rights.
2. Right to voice grievances and recommend changes in policies and services to facility staff, to contact outside representatives, to file complaints, and to cooperate in inspections and investigations free from restraint, interference, coercion, discrimination or reprisal.
3. Right to prompt efforts by the facility to resolve grievances, including those involving the behavior of other residents.
4. Right to obtain a written decision regarding a grievance.
5. Right to contact and receive information from agencies acting as client advocates.

P. Right to file complaint.

1. Any person has the right to file a complaint by phone, in writing, or in person with the Department of Public Health (DPH) against a nursing home.
2. DPH shall not disclose the complainant's name.
3. DPH shall notify the complainant of the assigned inspector's name within 2 working days of the receipt of the complaint.
4. DPH shall notify the complainant of the opportunity to accompany the investigator during the inspection of the facility.
5. DPH shall make an onsite inspection or investigation within 24 hours of the receipt of the complaint if there is a serious threat of imminent danger of death or serious bodily harm; onsite investigations of all other complaints must begin within 10 working days of receipt of the complaint.
6. DPH shall complete investigations of complaint received on or after July 1, 2018, within 60 days of receipt and notify the complainant in writing of its findings upon completion.
7. Investigations may be extended up to an additional 60 days due to extenuating circumstances. DPH shall document the circumstances and notify the complainant in writing of the estimated completion date.
8. DPH shall notify the complainant of the right to appeal the findings, initially to the district office that investigated the complaint, and if still dissatisfied, to DPH's state office.
9. DPH shall send a copy of any citation issued as a result of the complaint to the complainant by registered or certified mail.
10. DPH shall advise the facility that it is unlawful to discriminate or seek retaliation against a complainant.
11. Nursing home may not seek to expel resident in retaliation for filing of complaint; attempt to evict resident within 180 days of filing of complaint against facility is rebuttably presumed to be retaliatory.

Q. Enforcement of rights.

1. Right to sue facility for injunction or damages for violation of rights.

References:

- CANHR, Long Term Care Justice and Advocacy, 650 Harrison Street, 2nd Floor, San Francisco, CA 94107, (800-474-1116 (consumers only), (415) 974-5171, www.canhr.org, 5.11.2021.
- United States Code (USC)
- Code of Federal Regulations (CFR)
- California Health and Safety Code (H&S Code)
- California Welfare & Institutions Code (W&I Code)