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Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

July 12, 2007

AFL 07-12

TO: SKILLED NURSING FACILITIES

SUBJECT: RESIDENTS' RIGHTS AND MANDATED TRANSFER AND DISCHARGE PROCEDURES

Serious allegations have recently been brought to the attention of the California Department of Public Health (CDPH) Licensing and Certification Program (L&C) regarding facilities' non-compliance with current law related to long term care residents' rights, and mandated procedures and notifications surrounding the transfer and discharge of residents. Health and Safety Code Sections §1336, §1336.1, and §1336.2 address facilities' obligations when resident transfer or discharge is necessary, including steps that must be taken in advance of residents' transfer/discharge in order for the transfer/discharge to be safe and orderly and to minimize the potential for transfer trauma.

CDPH L&C is extremely concerned about these allegations. This memorandum serves as notification that L&C will continue to vigorously enforce the standards contained in state law that are designed to protect this vulnerable population. When a facility is determined to be non-compliant with the state law, appropriate enforcement actions will be taken.

The relevant statutes are attached for your reference.

Sincerely,

Original Signed by Kathleen Billingsley, R.N.

Kathleen Billingsley, R.N.
Deputy Director

Attachment

ATTACHMENT

CALIFORNIA CODES
HEALTH AND **SAFETY CODE**
SECTION **1336-1336.2**

1336. Notwithstanding any other provisions of law, a long-term health care facility shall give written notice to the affected patients or to the guardians of the affected patients at least 30 days prior to any change in the status of the license or in the operation of the facility resulting in the inability of the facility to care for its patients.

If patients' placement problems are encountered which cannot be satisfactorily resolved within this 30-day period, the State Department of Health Services and the health facility shall agree on an extension which shall not exceed an additional 60 days.

The facility shall provide an appropriate team of professional staff to assist patients and families in obtaining alternative placement.

This section shall not apply to actions initiated by the department to suspend or revoke the license.

1336.1. (a) After notifying its affected patients, the facility shall, in response to inquiries made by prospective patients or their representatives, include notification of the change in the status of the license or the operation of the facility.

(b) The facility shall also give oral notification to the office of the State Long-Term Care Ombudsman of the change in the status of the license or the operation of the facility at least 30 days prior to any change in the status of the license or the operation of the facility.

1336.2. (a) Before residents are transferred due to any change in the status of the license or operation of a facility, including a facility closure or voluntary or involuntary termination of a facility's Medi-Cal or Medicare certification, the facility shall take reasonable steps to transfer affected residents safely and minimize possible transfer trauma by, at a minimum, doing all of the following:

(1) Be responsible for ensuring that the resident's attending physician, if available, or a facility medical director, if available, completes the medical assessment of the resident's

condition and susceptibility to adverse health consequences, including psychosocial effects, prior to written notice of transfer being given to the resident. The assessment shall not be considered complete unless it provides, in accordance with these assessments, recommendations for counseling, followup visits, and other recommended services, by designated health professionals, and for preventing or ameliorating potential adverse health consequences in the event of transfer.

(2) Be responsible for ensuring that the facility nursing staff and activity director complete an assessment of the social and physical functioning of the resident based on the relevant portions of the minimum data set, as described in Section 14110.15 of the Welfare and Institutions **Code**, before written notice of transfer is given to the resident. The assessment shall not be considered complete unless it provides recommendations for preventing or ameliorating potential adverse health consequences in the event of transfer. The assessment may be amended because of a change in the resident's health care needs. The assessment shall also include a recommendation for the type of facility that would best meet the resident's needs.

(3) Be responsible for evaluating the relocation needs of the 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. The health facility shall discuss the evaluation and medical assessment with the resident or the resident's representative and make the evaluation and assessment part of the medical records for transfer.

If the resident or resident's representative chooses to make a transfer prior to completion of assessments, the facility shall inform the resident or the resident's representative, in writing, of the importance of obtaining the assessments and followup consultation.

(4) At least 30 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.

(5) Arrange for appropriate future medical care and services, unless the resident or resident's representative has otherwise made these arrangements. This requirement does not obligate a facility to pay for future care and services.

(b) The facility shall provide an appropriate team of professional staff to perform the services required in subdivision (a).

(c) The facility shall also give written notice to affected residents or their representatives, advising them of the requirements in subdivision (a) at least 30 days in advance of transfer. If a facility is required to give written notice pursuant to Section **1336**, then the notice shall advise the affected resident or resident's

representative of the requirements in subdivision (a). If the transfer is made pursuant to subdivision (g), the notice shall include notification to the resident or resident's representative that the transfer plan is available to the resident or resident's representative free of charge upon request.

(d) In the event of a temporary suspension of a facility's license pursuant to Section 1296, the 30-day notice requirement in subdivision (c) shall not apply, but the facility shall provide the relocation services required in subdivision (a) unless the department provides the services pursuant to subdivision (f).

(e) The department may make available assistance for the placement of hard-to-place residents based on the department's determination of the benefit and necessity of that assistance. A hard-to-place resident is a resident whose level of care, physical malady, or behavioral management needs are substantially beyond the norm.

(f) The department may provide, or arrange for the provision of, necessary relocation services at a facility, including medical assessments, counseling, and placement of patients, if the department determines that these services are needed promptly to prevent adverse health consequences to patients, and the facility refuses, or does not have adequate staffing, to provide the services. In these cases, the facility or the licensee shall reimburse the department for the cost of providing the relocation services. The department's participation shall not relieve the facility of any responsibility under this section. If the department does not provide or arrange for the provision of the necessary relocation services, and the facility refuses to provide the relocation services required in subdivision (a), then the department shall request that the Attorney General's office or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions **Code**.

(g) If 10 or more residents are likely to be transferred due to any voluntary or involuntary change in the status of the license or operation of a facility, including a facility closure or voluntary or involuntary termination of a facility's Medi-Cal or Medicare certification, the facility shall submit a proposed relocation plan for the affected residents to the department for approval at least 15 days prior to the written transfer notification given to any resident or resident's representative. The plan shall provide for implementation of the relocation services in subdivision (a) and shall describe the availability of beds in the area for residents to be transferred, the proposed discharge process, and the staffing available to assist in the transfers. The plan shall become effective upon the date the department grants its approval. The department shall base its approval of a relocation plan on the standards specified in this section. The department shall promptly

either approve or reject the plan within 10 working days of receipt from the facility. If the department rejects the plan, the facility may resubmit amended relocation plans, each of which the department shall promptly either approve or reject within 10 working days of receipt from the facility. Until one plan has been approved by the department, and until the facility complies with the requirements in subdivision (a), the facility may not issue a notice of transfer. The facility shall submit the relocation plan to the local long-term care ombudsman at the same time the plan is submitted to the department.

(h) The resident shall have the right to remain in the facility for up to 60 days after the approved written notice of the facility's intent to transfer the resident if an appropriate placement based on the relocation assessment and relocation recommendations has not been made. The facility shall be required to 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. The department shall monitor the facility's staging of transfers, and, if it determines that the facility's staging of placements is causing a detrimental impact on those residents being transferred, then the department shall limit the number of residents being transferred per day until the department determines that it would be safe to increase the numbers.