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AFL 16-01

TO: Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)

SUBJECT: Transfer, Discharge and Readmission Requirements

AUTHORITY: Code of Federal Regulations (CFR), Title 42, part 483.10 *et seq.*; Title 42, part 488.424 *et seq.*; Health and Safety Code (HSC) sections 1417 *et seq.*; 1599.1 and 1599.60 *et seq.* Welfare and Institutions Code section 14124.7, California Code of Regulations (CCR), Title 22, sections 72520, 72527, 73504, 73523 and the California Standard Admissions Agreement (SAA)

All Facilities Letter (AFL) Summary

SNFs and ICFs may only transfer and discharge residents under specified circumstances and shall notify all residents of the facility's written bed hold policy. Upon request, all SNFs and ICFs shall hold the bed of any resident transferred to a general acute care hospital for at least 7 days. The facility's policy shall allow for readmission to the facility upon the first available bed if the bed hold period has lapsed.

Transfer and Discharge Requirements

All SNFs and ICFs must adhere to specified notice, transfer, discharge, and right to return requirements.

Each facility must permit residents to remain in the facility, and not transfer or discharge the resident from the facility unless:

- (i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;



- (ii) 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;
- (iii) The safety of individuals in the facility is endangered;
- (iv) The health of individuals in the facility would otherwise be endangered;
- (v) 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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;
- (vi) The facility ceases to operate; or
- (vii) The resident has made a material or fraudulent representation of his or her finances.

A facility may involuntarily discharge a resident for failure to pay his or her share of the cost. However, a resident cannot be transferred for non-payment if he or she has submitted all the paperwork necessary for the bill to be paid by a third-party payor. Non-payment occurs if a third-party payor, including Medicare or Medi-Cal, denies the claim and the resident refuses to pay for his or her stay. Additionally, a dual-eligible resident residing in a Medi-Cal certified facility has a right to transition to Medi-Cal from Medicare if the resident needs continuing care in the facility. If a facility participates in Medi-Cal or Medicare, the facility may not transfer or discharge a resident, nor transfer a resident within the facility solely because of a change from private pay or Medicare to Medi-Cal payment. However, a facility may transfer a resident from a private room to a semiprivate room if the resident changes to Medi-Cal payment status.

Notice Provided to Resident Prior to Transfer or Discharge

Before any transfer or discharge occurs, the facility must notify, in writing, the resident and, if known, the family member or legal representative of the transfer or discharge and the reasons for the move. The reasons for the move must be recorded in the resident's clinical record. This notice must be made by the facility at least 30 days before the resident is transferred or discharged unless the transfer is made for medical, health and safety reasons, or in cases of facility closure.

Except in an emergency, a facility may not transfer a resident to another room within the facility against his or her wishes, unless given prior reasonable written notice.

Resident Right to Return to the Facility

All SNFs and ICFs shall afford any resident transferred to a general acute care hospital a bed hold of at least seven days and inform each current resident or resident's representative in writing of the resident's right to exercise this bed hold provision. Whenever a resident is transferred to a hospital, the facility must provide written notice to a resident of the bed hold policy. The resident or the resident's representative shall inform the facility within 24 hours if the resident desires the facility to hold a bed for him or her. Residents must be permitted to return to the facility if they exercised their right to a bed hold. Moreover, a nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident requires the services provided by the facility.

Enforcement

CDPH investigates complaints of alleged violations of the transfer, discharge and readmission requirements that come to its attention via residents, residents' family members, ombudsmen, complaints of violations of administrative hearing orders, and other sources. When CDPH substantiates that a violation has occurred of the transfer, discharge and readmissions requirements, its enforcement options are as follows.

A violation of the regulations pertaining to transfer, discharge and readmission requirements may result in a Class B Citation with a fine of \$2,000 and additional fines of \$50 per day per violation until the resident is readmitted. CDPH may issue a trebled civil penalty for subsequent violations to a facility that has received a Class B Citation for a transfer, discharge or readmission violation within the prior 12 months.

CDPH may also take the following enforcement actions against certified facilities that fail to maintain compliance with readmission requirements:

- Impose a directed plan of correction for facilities that delay submitting a plan of correction or that provide an unacceptable plan of correction;
- Recommend the imposition of federal civil money penalties for each instance of non-compliance or for the number of days the facility remains out of compliance;
- Recommend the imposition of additional federal enforcement actions including:
 - Denial of Medicare or Medicaid payment for new admissions
 - A ban on admissions
 - Denial of payment for all Medicare and Medicaid individuals in the facility
 - Termination of the facility's Medicare and/or Medicaid provider agreement.

The information in this AFL is a brief summary of the laws and regulations governing the transfer and discharge of residents in SNF and ICFs. Facilities are responsible for following all applicable laws. For more information regarding SNF and ICF transfer, discharge and readmission requirements, refer to the California Standard Admission Agreement (<http://www.cdph.ca.gov/pubsforms/forms/CtrlForms/cdph327.pdf>) and the applicable state and federal requirements referenced above.

If you have any questions, please contact your respective district office.

Sincerely,

Original signed by Jean Iacino

Jean Iacino
Deputy Director