



*California's Protection & Advocacy System
Toll-Free (800) 776-5746*

Enhanced Discharge Planning Rights for Nursing Facility Residents under MDS 3.0 Section Q

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I. Background and Legal Authority

The Federal Nursing Home Reform Act, or OBRA '87 (Omnibus Budget Reconciliation Act of 1987), created a set of national minimum set of standards of care and rights for people living in certified nursing facilities.

Part of what is required of nursing facilities by the Nursing Home Reform Act is a “a comprehensive, accurate, standardized, reproducible assessment of each resident’s functional capacity” which: (i) describes the resident’s capability to perform daily life functions and significant impairments in functional capacity; (ii) is based on a uniform minimum data set; (iii) uses a standardized instrument; and (iv) includes the identification of medical problems.¹

This comprehensive assessment is implemented through the Resident Assessment Instrument (RAI) system. The RAI was designed to improve service quality by requiring nursing homes to develop individual care plans, protocols for follow-up care and algorithms to “trigger” residents’ potential care needs. The Minimum Data Set (MDS), a component of the RAI, is

¹ 42 U.S.C § 1396r(b)(3)(A).

used to collect information about patients' physical and mental health status as well as specific treatments at regular time intervals.²

II. MDS 3.0

The Obama Administration announced the “Year of Community Living” in June 2009, to mark the 10th anniversary of the *Olmstead v. L.C.* decision. Subsequently, the Department of Health and Human Services (HHS) announced the Community Living Initiative. In a May 2010 “Dear State Medicaid Director” letter from the Centers for Medicare & Medicaid Services (CMS), various Community Living Initiatives are described, including, under “Discharge Planning,” a description of the Minimum Data Set (MDS) for Certified Nursing Facilities:³

On October 1, 2010, all certified nursing facilities will be required to adopt and implement a new 3.0 version of the MDS.⁴ While MDS 3.0 has several new enhancements to ensure the resident assessments are more person-centered, there are notable changes in the MDS' Section Q, which address resident discharge planning. Under Section Q, nursing facilities must now ask residents directly if they are “interested in learning about the possibility of returning to the community.” If a resident indicates yes, a facility will be required to make appropriate referrals to community integration agencies such as Aging and Disability Resource Connection (ADRC) programs, Centers for Independent Living, California Community Transitions (CCT) Lead Organizations (LO), and Area Agencies on Aging. Further information regarding MDS 3.0 and the CMS training opportunities may be found at:

<https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/NHQIMDS30.html>

This improvement to the MDS ensures that all individuals are asked

² U.S.C 1396r(e)(5); 1396r(f)(6); 42 C.F.R 483.315

³ SMDL# 10-008, <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD10008.pdf>.

⁴ The previous version was known as MDS 2.0.

about their preferences and given the opportunity to learn about community options.

Timeline and Process for implementation

Beginning October 1, 2010, nursing facilities began using the MDS 3.0. As described above, Section Q requires that all residents be asked if they are interested in talking to someone about returning to the community.

If the resident says yes, they will be referred to a local contact agency (LCA). The LCA will contact the resident and provide information on transition resources. If the resident is interested in pursuing community transition, the nursing facility and the LCA will work together with the resident to plan their transition back to the community.⁵ All residents (regardless of payer source) receive an MDS Section Q assessment. The LCA provides resources for residents whose care is reimbursed by all payee sources.

The roles and responsibilities for LCAs are defined generally by the Section Q process, but states have been given great flexibility in defining their particular activities and responsibilities. In general, the LCA's role is to contact individuals referred to them by nursing facility representatives through the Section Q processes in a timely manner, provide information about choices of services and supports in the community that best serve the individual's needs, and provide the resident with a choice of transition agencies to collaborate with the nursing facility to organize the transition to community living if possible.

The exact mode and content of that contact with the nursing facility resident is to be determined by each state in response to their goals for providing choices of services and settings to individuals, with substantial input from all stakeholders involved.

⁵ Depending on the LCA's ability to actually provide transition services beyond information, the LCA may make a referral to a local agency who will work with the resident and the facility.

These resident contacts have been termed information and assistance⁶ or options counseling⁷ under various federal/state programs.

There are instructions to nursing facilities in the MDS 3.0 Instructors Guide for a “Yes” response to trigger follow-up care planning and make contact with the designated local contact agency about the resident’s request within 10 business days of a yes response being given. This is a recommendation however, and not a requirement.

Follow-up is expected in a “reasonable” amount of time. There are currently no regulatory or statutory requirements for MDS 3.0 that address the amount of time a nursing facility has to make a referral to an LCA or the amount of time an LCA has to respond to the referral from the nursing facility. States may establish their own process to monitor performance.⁸

How California is Implementing MDS 3.0 Section Q.

The California Department of Health Care Services has designated one or more LCAs in each county. The LCAs are responsible for keeping data on nursing facility referrals, and providing information/education to individuals who have indicated the desire to speak with someone about home and community based living options. LCAs may be one of several agency types: ADRC programs, California Community Transitions Lead Organizations, Independent Living Centers, or Area Agencies on Aging.

⁶ Information and Assistance is a core service required for aging network providers (Area Agencies on Aging) by the Administration on Aging.

⁷ Options counseling, for long-term care services and supports, is an interactive decision-support process whereby consumers, family members and/or significant others are supported in their deliberations to determine appropriate long term care choices in the context of the consumer’s needs, preferences, values, and individual circumstances. (National Association of State Units on Aging, Long-Term Supports Options Counseling, Independent Living Research Utilization, January 2007, p.4).

⁸ According to CMS, “We would expect a reasonable contact response time on the part of the LCA of within 3 days by phone and within 10 days if an on-site visit is needed.” See, MDS 3.0 Section Q Implementation Questions and Answers from Informing LTC Choice conference and emails September 22, 2010. See also, <https://www.dhcs.ca.gov/services/ltc/Pages/MDS3,SectionQ.aspx>.

LCAs are required to provide information/education to all interested individuals in nursing facilities and reimbursement is available for this service regardless of payer source. Transition assistance is currently only reimbursed for Medi-Cal beneficiaries through California Community Transitions or existing Home and Community-based waivers.

Frequency of Administration

Currently, federal requirements for administration of the MDS assessment set forth that assessment must be conducted no later than 14 days after the date of admission; promptly after a significant change in the resident's physical or mental condition; and in no case less often than once every 12 months.⁹ In addition, nursing facilities must "assess a resident using the quarterly review instrument specified by the State and approved by CMS not less frequently than once every 3 months."¹⁰ It appears from the MDS 3.0 "Resident Assessment and Care Screening Nursing Home Quarterly (NQ) Item Set" assessment tool that Section Q will be administered on a quarterly basis.

III. How do PASRR and MDS Q work together?

Preadmission Screening and Resident Reviews (PASRR) and MDS Q are separate and independent legal obligations. PASRR requires nursing facilities to screen all individuals, prior to or upon admission and when there is a significant change in condition, for a serious mental illness (MI) or developmental disability (DD). This is called the Level I screen. Identified individuals are referred to the appropriate state agency for a Level II evaluation.¹¹ In California, individuals with MI are referred to the Department of Health Care Services.¹²

⁹ 42 U.S.C. § 1396r (b)(3)(c); 42 C.F.R. § 483.20(b)(2).

¹⁰ 42 C.F.R. § 483.20(c).

¹¹ 42 C.F.R. §483.20(m).

¹² 11 See, <http://www.dhcs.ca.gov/services/MH/Pages/PASRR.aspx>.

Individuals with developmental disabilities are referred to the Department of Developmental Services (DDS) and the local Regional Center. See, <https://www.dds.ca.gov/rc/listings/>. These agencies are responsible for performing a complete evaluation and making a determination as to whether the NF level of care is appropriate and/or whether specialized services are needed. Local Regional Centers and local mental health agencies have additional obligations under the law to provide community based services and supports.

While PASRR and MDS Q screens and referrals may be made at about the same time, obligations under each are distinct and the duties triggered are completed by separate agencies. However, as part the options counseling process, LCAs may inform residents of services and supports available to them through the Regional Centers and community mental health plans. Further, NFs, as part of their ongoing obligation to meet residents' needs and to conduct appropriate discharge planning, need to consider recommendations made through the PASRR evaluation process as well.

IV. Resources for residents who do not receive an MDS Q assessment, or have other problems with discharge planning

- Local Ombudsmans' Offices: The Ombudsman is available 24 hours a day, 7 days a week to take calls and refer complaints from residents (1-800-231-4024).
- Local Independent Living Center: <https://www.calsilc.ca.gov/independent-locator/>
- Licensing: Under federal law, nursing home residents can file complaints based on any matter protected by law, which includes their right to an MDS Q assessment, with the Department of Public Health (DPH), the California agency charged with licensing and inspecting nursing homes. The DPH will investigate the complaint and will make its own findings. To file a complaint with DPH, contact the district office of the Licensing and Certification Division in your area listed below.¹³

¹³ <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/DistrictOffices.aspx>.

V. Licensing and Certification District (LCD) Office Addresses

1. **East Bay District Office**
850 Marina Bay Parkway, Building P, 1st Floor
Richmond, CA 94804-6403
Phone: (510) 620-3900
Toll Free: (866) 247-9100
Email: CDPH-LNC-EASTBAY@cdph.ca.gov
Counties Served: Alameda, Contra Costa

2. **Bakersfield Office**
4540 California Ave, Suite 200 Bakersfield,
CA 93309
Phone: (661) 336-0543
Toll Free: (866) 222-1903
Email: CDPH-LNC-BAKERSFIELD@cdph.ca.gov
Counties Served: Kern, Tulare

3. **Chico Office**
126 Mission Ranch Boulevard
Chico, CA 95926
Phone: (530) 895-6711
Toll Free: (800) 554-0350
Email: CDPH-LNC-CHICO@cdph.ca.gov
Counties Served: Butte, Colusa, Glenn, Lassen, Modoc,
Nevada, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama,
Trinity, Yuba

4. **San Francisco Office**
150 North Hill Drive, Suite 22
Brisbane, CA 94005
Phone: (415) 330-6353
Toll Free: (800) 554-0353
Email: CDPH-LNC-DALYCITY@cdph.ca.gov
Counties Served: San Francisco, San Mateo, Santa Clara
(Parts of: Cupertino, Los Altos, Mountain View, Palo Alto, Santa Clara, Saratoga, Sunnyvale)

5. **Fresno Office**
285 W. Bullard, Suite #101
Fresno, CA 93704
Phone: (559) 437-1500
Toll Free: (800) 554-0351
Email: CDPH-LNC-FRESNO@cdph.ca.gov
Counties Served: Fresno, Kings, Madera, Mariposa, Merced, Stanislaus

6. **Los Angeles District Office**
12440 E. Imperial Highway, Rm 522
Norwalk, CA 90650
Phone: (562) 345-6884
Toll Free: (800) 228-1019
Email: CDPH-LNC-LOSANGELES@cdph.ca.gov
County Served: Los Angeles

7. **Santa Rosa/Redwood Coast District Office**
2170 Northpoint Parkway
Santa Rosa, CA 95407
Phone: (707) 576-6775
Toll Free: (866) 784-0703
Email: CDPH-LNC-SANTAROSA@cdph.ca.gov
Counties Served: Napa, Solano, Marin, Sonoma, Mendocino, Humboldt, Lake, Del Norte

8. **Orange County Office**
681 S. Parker Street, Suite 200
Orange, CA 92868
Phone: (714) 567-2906
Toll Free: (800) 228-5234
Email: CDPH-LNC-ORANGECOUNTY@cdph.ca.gov
County Served: Orange

9. **Riverside Office**
625 East Carnegie Drive, Suite 280
San Bernardino, CA 92408

Phone: (909) 388-7170
Toll Free: (888) 354-9203
Email: CDPH-LNC-RIVERSIDE@cdph.ca.gov
County Served: Riverside

10. Sacramento Office

3901 Lennane Drive, Suite 210
Sacramento, CA 95834
Phone: (916) 263-5800
Toll Free: (800) 554-0354
Email: CDPH-LNC-SACRAMENTO@cdph.ca.gov
Counties Served: Alpine, Amador, Calaveras, El Dorado, Placer, Sacramento, San Joaquin, Yolo, Tuolumne

11. San Bernardino Office

464 West Fourth Street, Ste. 529
San Bernardino, CA, 92401
Phone: (909) 383-4777
Toll Free: (800) 344-2896
Email: CDPH-LNC-SANBERNARDINO@cdph.ca.gov
Counties Served: Inyo, Mono, San Bernardino

12. San Diego District Office

7575 Metropolitan Drive, Suite 211
San Diego, CA 92108
Phone: (619) 278-3700
Toll Free: (800) 824-0613
Email: CDPH-LNC-SANDIEGO@cdph.ca.gov
Counties Served: Imperial, San Diego

14. San Jose Office

100 Paseo de San Antonio, Suite 235
San Jose, CA 95113
Phone: (408) 277-1784
Toll Free: (800) 554-0348
Email: CDPH-LNC-SANJOSE@cdph.ca.gov

Counties Served: Monterey, Santa Clara (Parts of: San Jose, Los Gatos, Campbell, Milpitas, Morgan Hill, Gilroy), San Benito, Santa Cruz

15. **Ventura Office**

1889 North Rice Avenue, Suite 200

Oxnard, CA 93030

Phone: (805) 604-2926

Toll Free: (800) 547-8267

Email: CDPH-LNC-VENTURA@cdph.ca.gov

Counties Served: San Luis Obispo, Santa Barbara, Ventura

Sample Nursing Home Complaint Form

The form below may be used as a guide for what to include when filing a complaint.

Date Completed:

Name of person filing complaint:

Address:

City: State: Zip:

Daytime phone: Evening:

Name of facility:

Address of facility:

City: State: Zip:

Name of NH resident on whose behalf the complaint is made:

Complaint:

Date(s) of incident:

Shift(s) when incident(s) occurred, if known:

Day Afternoon Night Time(s):

Witnesses (including health care professionals):

Records that should be examined:

Name of staff person(s) if violation involves action or lack of action by staff:

Mark the following spaces that apply:

I have sent a copy of my complaint to the appropriate Licensing and Certification district office of the California Department of Public Health.

I have sent the Ombudsman Program a copy of this complaint.

I am sending my California State Legislator a copy of this complaint.

I am sending a copy to the Attorney General.

I want to know the name of the investigator assigned to this complaint.

I want to talk with the investigator before s/he goes to the facility for an onsite visit.

I want to accompany the investigator to the facility when the complaint investigation is being done.

I want to remain anonymous. I do not want my name or identity known to the nursing facility.

I want a copy of the final complaint report, and notice of my rights if I am not satisfied with your findings.

We want to hear from you! Please complete the following survey about our publications and let us know how we are doing!

<https://docs.google.com/forms/d/1d6ezTI2M5UMAWU66exLbc1SQ9wDPzvtuS3AGR4-cgwE/viewform?c=0&w=1>

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to

[*http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html*](http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html).