



California's protection & advocacy system

Hospital Discharge Rights for Medi-Cal and Medicare Recipients

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This Publication explains your rights as a Medi-Cal or Medicare recipient when discharged home or to another facility.

1) The hospital wants to discharge me but I'm not ready to go. What can I do to stay in the hospital longer?

You can request a hospital discharge planning evaluation. A hospital discharge planning evaluation is an assessment by the hospital to see if you need a discharge plan. Hospitals must complete an evaluation if a patient requests it.¹

If the evaluation shows you need a discharge plan, the hospital must develop one.² A discharge plan should ensure a smooth recovery, and prevent readmission to a hospital by identifying and setting up any services you will need upon discharge.³ If needed, the discharge plan must also include a "list of home health agencies, or [skilled nursing facilities], that are

¹ 42 CFR. § 482.43(b)(1) ([Return to Main Document](#))

² 42 C.F.R. § 482.43(c)(1)([Return to Main Document](#))

³ "Hospital Discharge Planning: A Guide for Families and Caregivers," available at: [Hospital Discharge Planning: A Guide for Families and Caregivers](#) ([Return to Main Document](#))

available to you, that are participating in the Medicare [or Medi-Cal] program, and that serve or reside in [your] geographic area.”⁴

If you are a Regional Center consumer, the Regional Center must provide targeted case management services. This means that the Regional Center must “assist [you] in transitioning from inpatient to outpatient status, and arranging for appropriate service for the person being discharged.”⁵ The Regional Center is responsible for discharge planning up to 180 days prior to your discharge. When you request discharge planning, you should include your Regional Center Nurse or Doctor, and request the Regional Center Nurse or Doctor be present at your discharge planning meeting.

If you are being discharged to another facility, you can ask to visit the skilled nursing facilities the hospital plans to discharge you to. When you or your personal representative visits the facility, explain your health care needs, and inquire about whether the facility can competently care for you.

If the listed facility cannot competently care for you, then you or your personal representative should contact the hospital right away. Tell the hospital case manager the proposed facilities are not adequate, and you oppose any discharge to those facilities.

2) Will I receive a Notice of Action for the hospital discharge?

The hospital does not have to provide a Notice of Action of an upcoming hospital discharge. If the treating physician has signed a discharge order, this means your treating medical providers believe you no longer need acute care. The hospital only needs to tell you, or your family caregiver representative, once the discharge order is issued, and when you are discharged.⁶ Although hospitals may have different practices, Medi-Cal/Medicare/the hospital does not have to give you or your representative a written discharge notice.

⁴ 42 C.F.R. § 482.43(c)(6) ([Return to Main Document](#))

⁵ California Medicaid State Plan, Supplement 1 to Attachment 3.1-A, Section 10.D, as amended by State Plan Amendment 005-001, approved 3-14-05. ([Return to Main Document](#))

⁶ H.S.C. § 1262.5(d).([Return to Main Document](#))

3) How can I appeal the hospital discharge?

If you have fee for service Medi-Cal and believe Medi-Cal was wrong in trying to discharge you, you may request a state fair hearing.⁷ You cannot appeal with aid paid pending if the doctor did not request additional acute care services that Medi-Cal denied.⁸ Note that your appeal may not be successful if the hospital-provider does not recommend acute services.

If you have a Medi-Cal Managed Care Plan, the hospital's discharge is not an "adverse benefit determination" (ABD) that you can appeal. However, you could ask the Managed Care Plan (MCP) for more days. If your request is denied, this may be considered an ABD.⁹ You should then follow the MCP's internal grievance and appeals process.¹⁰ It is not clear under the law if the grievance and appeals process applies here, but you can try.

4) If I stay in the hospital during my appeal, do I have to pay for my hospital stay?

If you are in fee for service Medi-Cal and the doctor did not request additional acute services when the hospital said you will be discharged, then you will likely be responsible for the hospital stay if you stay in the hospital during the appeal because you cannot appeal with aid paid pending.¹¹

⁷ 42 CFR § 431.220(a)(1) ([Return to Main Document](#))

⁸ 42 CFR § 431.206(b)(1)-(4) ([Return to Main Document](#))

⁹ 42 CFR § 438.400(b) ([Return to Main Document](#))

¹⁰ See DRC's publication, "Medi-Cal Managed Care Grievances and Appeals," available at: Available at: [Medi-Cal Managed Care: Appeals and Grievances](#); see also, APL 17-006, available at: [DHCS GRIEVANCE AND APPEAL REQUIREMENTS AND REVISED NOTICE TEMPLATES AND "YOUR RIGHTS" ATTACHMENTS](#). ([Return to Main Document](#))

¹¹ Aid paid pending is allowed when 10 day or 5 day advance notice is required. 42 CFR § 431.230. Advance notice is not required when "a change in the level of medical care is prescribed by [your] physician." 42 CFR § 431.230(a). The physician changed your level of medical care when she/he signed off on a discharge order. See also, 22 C.C.R. § 51014.2(a); MEDI-CAL PROVIDER MANUALS, "TAR Deferral/Denial Policy (Frank v. Kizer)," Inpatient Services (IPS). ([Return to Main Document](#))

For those in a MCP, it is not clear whether you can appeal with aid paid pending.

5) What services can help me at home after I'm discharged?

If you are currently hospitalized, consider applying for the Home and Community Based Alternatives Waiver. See Disability Rights California publication # 5591.01 for more information.¹² There is usually a long waiting list to get on the Waiver. If you are currently in a hospital and need the waiver to be discharged to your home, you will not be put on the waiting list.

If you have resided in an inpatient nursing facility, intermediate care facility for the developmentally disabled, or a distinct part of an acute care hospital (DP/NF) for over 90 days, but still need services like those you received in the hospital to live independently, you may qualify for the California Community Transitions (CCT) Program. The CCT program helps people with Medi-Cal get the extra help they need to move from a medical facility to their own home. Some services the CCT program provides are paying for home modifications like grab bars and ramps, or identifying programs that will help you live in the community. See the DRC CCT publication # 5602.01 for more information.¹³ Please bear in mind that this program may not continue past 2018. You should still check with your local CCT however, because funding may be reauthorized.

In-Home Supportive Services (IHSS) is another program offering attendant care services at home. If you apply for IHSS while hospitalized, IHSS must assess you while you are in the hospital, so you will have IHSS when discharged home.¹⁴ More information about IHSS is available on DRC's

¹² See the Disability Rights California publication number 5591.01, available at: [The Home and Community Based Alternatives \(HCB Alternatives\) Waiver \(formerly known as the Nursing Facility/Acute Hospital Waiver\): The Basics . \(Return to Main Document\)](#)

¹³ See the Disability Rights California publication number 5602.01, available at: [The California Community Transitions \(CCT\) Program: A Way for a Nursing Home Resident to Return to the Community. \(Return to Main Document\)](#)

¹⁴ See the Disability Rights California publication number 5239.01. See also All-County Letter Number 02-68: [Department of Social Services: Grievance](#)

website ([Disability Rights California Publication: In-Home Supportive Services \(IHSS\)](#)).

6) Can the hospital “dump” me on the streets?

No, hospitals “must make arrangements for post-hospital care for patients who are likely to suffer adverse health consequences upon discharge.”¹⁵

7) What are hospital discharge rights for homeless patients?

Hospitals are not allowed to discriminate against homeless patients.¹⁶ Hospitals must have a written homeless patient discharge planning policy that “helps prepare the homeless patient for return to the community by connecting him or her with available community resources, treatment, shelter, and other supportive services.”¹⁷ The hospital must “be guided by the best interests of the homeless patient, his or her physical and mental condition, and the homeless patient’s preferences for placement.”¹⁸

Furthermore, the homeless patient must be informed of their available placement options. Hospital homeless patient discharge policies must be provided to the patient in a language understood by the patient.¹⁹

A homeless patient can be discharged to the following:²⁰

- Licensed health facility;
- Social services agency, nonprofit services provider, or governmental service provider so long as both the patient and provider agreed to the placement;
- Homeless patient’s residence, which includes a location the homeless patient identifies as their primary dwelling place; or
- An alternative location identified by the homeless patient.

[and Appeal Requirements and Revised Notice Templates and “Your Rights” attachments \(Return to Main Document\)](#)

¹⁵ 42 C.F.R. § 482.43(a). [\(Return to Main Document\)](#)

¹⁶ H.& S.C. § 1262.5(n)(2). [\(Return to Main Document\)](#)

¹⁷ H.& S.C. § 1262.5(n)(3). [\(Return to Main Document\)](#)

¹⁸ Id. [\(Return to Main Document\)](#)

¹⁹ H.& S.C. § 1262.5(n)(5). [\(Return to Main Document\)](#)

²⁰ H.& S.C. § 1262.5(n)(4)(A-C). [\(Return to Main Document\)](#)

Hospitals may not transfer you to another county to receive supportive services from a social services agency, non-profit, or health care service provider, without getting authorization from that agency.²¹ Discharge to Adult Protective Services is also not an acceptable discharge plan.²²

A hospital must also document and provide for a homeless person's well-being prior to discharge, some of which include:²³

- Being offered a meal prior to discharge;
- Offering weather-appropriate clothing if clothing is inadequate;
- Providing a prescription or medication if needed and if available;
- Offering vaccinations or screening for infectious diseases common to the area;
- Screening and assisting enrollment in affordable health insurance coverage;
- Screening and referral to behavioral health care if needed; and
- Offering transportation to a discharge location that is either 30 minutes traveling time or 30 miles traveling distance from the hospital.

As of July 1, 2019, hospitals must have an annually updated “written plan for coordinating services and referrals for homeless patients with the county behavioral health agency, health care and social services agencies in the region, health care providers, and nonprofit social services providers” that includes the following:²⁴

- A “list of local homeless shelters, admission procedures and requirements, client population served, and scope of medical and behavioral health services available,”
- Hospital procedures for “homeless patient discharge referrals to shelter, medical care, and behavioral health care,”
- “contact information for the homeless shelter’s intake coordinator,” and

²¹ H.& S.C. § 1262.4(a). [\(Return to Main Document\)](#)

²² See All County Information Notice I-42-18, and [Discharge Planning: Guidance for Adult Protective Services Programs.](#)[\(Return to Main Document\)](#)

²³ H.& S.C. § 1262.5(o)(1-10). [\(Return to Main Document\)](#)

²⁴ H.& S.C. § 1262.5(p)(1-4). [\(Return to Main Document\)](#)

- “training protocols for discharge planning staff.”

8) Who can I complain to about the hospital?

You can file a patient grievance with your hospital.²⁵

You can also file a complaint against your hospital with the California Department of Public Health Licensing & Certification.²⁶

To file a complaint against a specific doctor, you can do that with the California Medical Board: [Medical Board of California: Complaint Information](#)

Many hospitals are accredited through The Joint Commission. The Joint Commission has a complaint process for any health facility they accredit. Here is a link to their website with more information:

[The Joint Commission: Report a Patient Safety Event](#)

If you are a Medicare recipient, you can file a complaint with Livanta (see: [State of California: Office of the Patient Advocate Medicare Complaints](#))

If you receive fee for service Medi-Cal, you can file a complaint with the State of California Office of the Patient Advocate:

[State of California: Office of the Patient Advocate.](#)

If you receive Medi-Cal through a MCP, then you can contact the Office of the Ombudsman (an unaffiliated third party that attempts to resolve disputes between a MCP and a patient). Their information is available at:

[Medi-Cal Managed Care and Mental Health Office of the Ombudsman](#)

²⁵ Federal regulations require hospitals to have patient grievance procedures. 42 C.F.R. § 482.13(a)(2) ([Return to Main Document](#))

²⁶ You can do that online here: [Complaint Against a Health Facility/Provider.](#) ([Return to Main Document](#))