

GEORGIA

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290-5-8-.10 Medical, Dental and Nursing Care.

...(7) All medications must be administered by medical or nursing personnel in accordance with the Medical and Nurse Practice Acts of the State of Georgia. Each dose administered shall be properly recorded in the clinical records:

...(d) Self-administration of medications by patients should be discouraged except for emergency drugs on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

290-5-8-.18 Physical Plant Standards.

...(22) A public telephone shall be located near the lobby. At least one telephone shall be arranged to be convenient for a wheelchair user.

Legal Rights of Nursing Home Residents

Introduction

The State Bar of Georgia has provided this pamphlet to inform people about some of their legal rights regarding nursing home residency. It explains what you need to know before signing a nursing home admissions agreement and what you need to know while staying in a nursing home. The last page of this pamphlet lists agencies to contact for assistance.

Some Terms You Should Know

Legal guardian:

A competent person has the right to make decisions and control his or her own life. Georgia law considers a person to be competent unless a judge has found him or her to be incompetent and has appointed a legal guardian for that person. The legal guardian then has the right and obligation to make decisions for that person in accordance with the guardianship order.

Long-term care ombudsmen:

The long-term care ombudsman is an advocate for nursing home residents and helps protect residents' rights. An ombudsman investigates and works to resolve problems or complaints affecting residents. Complaints to an ombudsman may be made anonymously by anyone aware of a concern. Ombudsmen do not charge for their services, and they keep matters confidential. The ombudsman can, with the resident's permission, investigate and try to resolve the concern. However, the ombudsman does not regulate the facility.

Methods of payment:

The three common methods of payment for nursing home care are private pay, Medicare and Medicaid. The costs of the nursing home for a private pay resident are paid with his or her own resources, family resources or private insurance. Medicare (a government

insurance program) pays for certain kinds of care (called "skilled care") for a short period of time. Medicaid is a government insurance program for individuals with limited income, which will pay for nursing home care for financially eligible residents. Many individuals who enter a nursing home as a private pay resident use up their resources and become eligible for Medicaid. Not all nursing homes accept Medicaid, but most do.

Power of attorney:

This document grants certain specified powers from the principal (the person granting the power of attorney) to an agent. A Durable Power of Attorney for Health Care delegates power to an agent to make specified health care decisions on behalf of the principal when the principal is not able to either make or communicate such decisions.

A Financial Power of Attorney delegates power to an agent to make specified financial decisions for the principal. However, with a financial power of attorney, the agent may have authority to act even when the principal is also able to act depending on the provisions of the power of attorney. A power of attorney may delegate powers only for a specified period of time, for example, when the principal is having surgery and recovering, or when the principal is out of the country. Such a power of attorney, triggered by some event or occurrence, is known as a springing power of attorney. None of these powers of attorney is the same as guardianship. The principal creating the power of attorney decides the scope and duration of any agent's powers to act. Unlike the power of attorney, a judge of Probate Court determines the scope and duration of guardianship. If you have questions or concerns about guardianship and/or powers of attorney, you may wish to seek legal advice.

Nursing Home Admissions Agreement

A nursing home admission often follows a sudden and debilitating illness. You may be in despair of your loved one's worsening medical condition and may be desperate to locate an available placement. Failure to adequately review admissions contracts, ignoring the contents altogether or contractually agreeing to illegal terms often results.

It is extremely important that you read and understand the admission agreement before you sign it. You have the right to take the agreement home with you to review. You may wish to have an attorney look at it before you sign it. You have the right to ask the nursing home to make changes to the agreement before you sign it, but the nursing home does not have to agree to the changes. Make sure that all of the terms of the agreement are included before you sign it. Be sure to get a copy of the agreement after everyone has signed it.

Some nursing home admissions contracts contain provisions that are not allowed by law. This means that the nursing home cannot legally enforce those provisions against you. Some examples of the illegal provisions are discussed below. If you have questions or problems, you may contact one of the resources listed on the last page of this pamphlet.

Law Governing the Admissions Contract

A facility participating in Medicaid or Medicare is governed by federal and state laws. If a facility does not participate in Medicaid or Medicare, only state law applies. You should find out if the facility you are considering participates in Medicare or Medicaid.

Duration of Stay Agreements

Nursing homes in Georgia are not prohibited from giving preference to an applicant who is able to pay privately over an applicant who is Medicaid eligible. However, federal law prohibits nursing homes from:

- requiring at admission that the resident waive his or her rights to Medicare or Medicaid;
- requiring oral or written promises that residents are not eligible for Medicaid or Medicare or that they will not apply for those benefits; and
- requiring a resident to pay the nursing home from private funds for a given period of time before applying for Medicaid.

It is not true that once Medicare benefits are exhausted, the resident must leave the nursing home. Federal law protects residents from discrimination based on method of payment. Nursing homes must inform each resident who is entitled to Medicaid benefits what services are paid for by Medicaid and how a resident can apply for Medicaid. Such information must be provided to the resident in writing at the time of admission or at the time a resident becomes eligible for Medicaid.

Responsible Party and Guarantees of Payment

Nursing homes are also barred by federal law from requiring a guarantee of payment from a third party (that is anyone other than the resident) as a condition of admission, expedited admission or continued stay. A facility is permitted to require a third-party guarantee of payment for non-covered services (services not covered by Medicaid).

A facility may require an individual who has legal access to the resident's income or resources to pay for nursing home care and treatment from the resident's income and to sign an admissions contract, without incurring personal financial liability. Such individuals may include agents under financial powers of attorney, Social Security representative payees or guardians of property. All residents must pay for personal items, including hair styling and tobacco products.

Resident's Personal Needs Allowance Under Medicaid

Residents who receive Medicaid are required to contribute most, but not all, of their income toward the cost of their nursing home care. They are allowed to keep \$30 of their monthly income for clothing, toiletries, haircuts, personal phone calls and other personal needs (\$60.00 per month for a married couple). EXAMPLE: A resident has a monthly income of \$400.00 from Social Security. Each month the resident may keep \$30.00 for personal needs and must pay the remaining \$370.00 to the nursing home. Medicaid pays the balance of the nursing home cost.

Requiring Payment for Services Included in Medicaid or Medicare Programs

For residents who are covered by Medicare or Medicaid, these programs cover the expenses included in the approved reimbursement rate for that facility. These covered goods and services must be provided to the resident at no additional charge. These services include, but are not limited to: nursing services; dietary services; activities programs; room/bed maintenance services; routine personal hygiene items and services; and medically related social services. If the admission agreement requires payment for the services mentioned above, it is unenforceable. Any list of covered services in the admissions contract should be carefully reviewed. Nursing homes may offer additional services not included in the

Medicaid or Medicare reimbursement rate provided that the facility gives the resident proper notice of the availability and cost. The facility is not permitted to require payment for additional services as a condition to admission or continued stay in the facility.

Contributions to the Facility

State law and regulations prohibit facilities from requiring contributions from any resident.

Residents' Rights

Georgia law provides for the rights of residents concerning admission, transfer, discharge and care in the facility, and provides remedies for residents when those rights have been violated.

These rights include:

- the right to adequate and appropriate care and services without discrimination in the quality of service on the basis of age, gender, race, disability, religion, sexual orientation, national origin, marital status or source of payment for services;
- the right to seek enforcement of his/her rights without punishment, retaliation or harassment;
- the right to exercise constitutional rights including, but not limited to, the right to vote;
- the right to enjoy one's own privacy (for example, the resident can close doors and draw curtains);
- the right to respect privacy in provision of personal services;
- the right to practice religious beliefs, as well as the right to abstain from religious beliefs or practices;
- the right to be free from abuse, neglect, exploitation and to be free from chemical and physical restraints;
- the right to have one's own personal property;
- the right to send and receive mail unopened;
- the right to access a telephone;
- the right to manage one's own financial affairs;
- the right to refuse medical/dental treatment;
- the right to participate in one's care plan;
- the right to access one's records;
- the right to voluntarily transfer or discharge oneself;
- the right to access an ombudsman;
- the right to form a resident council; and
- the right to interact with members of the community and to participate fully in the life of the community.

Limitations on Residents' Rights

The admission contract may not seek to limit rights afforded to residents by federal or state law. If you have questions or concerns about residents' rights, please consult the resources listed at the end of this pamphlet for assistance.

Violations of Residents' Rights

Nursing home residents' rights are sometimes violated in connection with transfer and discharge. Complaints about inadequate medical care, food quality, neglect and abuse also arise. The following procedures may be used to address violations.

Grievance Procedure

Residents may complain either orally or in writing to the nursing facility administrator who must act to resolve the complaint. If the administrator is unable to resolve the complaint within three business days, he or she must respond in writing to the complaining party. If the resident is not satisfied with this response, the resident may submit an oral or written complaint to the community or state ombudsman.

If the ombudsman is unable to resolve the complaint, an impartial referee may be mutually agreed upon to convene a hearing on the issue held at the nursing home. A written decision must be rendered within 72 hours of the hearing, including any recommendations for corrective action. A resident may also bring a private cause of action in court or request an administrative hearing.

Fair Hearing

A resident or representative may request an administrative hearing through the Georgia Department of Human Resources, Office of Legal Services. The hearing must be held within 45 calendar days following the Department's receipt of the hearing request. Notice will be sent to the administrator and complainant with the date, time and location of the hearing. No transfer shall take place until all appeal rights are exhausted, unless there is an emergency situation. The decision of the administrative law judge will include whether a violation of rights occurred, and if so, what action should be taken. It must also include information about the right to appeal.

If you have questions or concerns about residents' rights, please consult the resources listed below for assistance.

State Resources**Office of the State Long-Term Care Ombudsman**

2 Peachtree Street NW, 9th Floor
Atlanta, GA 30303-3167
(888) 454-5826

Legal Services Developer**Division of Aging Services**

2 Peachtree Street NW, 9th Floor
Atlanta, GA 30303-3167
(404) 657-5319

Georgia Senior Legal Hotline

(404) 257-9519
(888) 257-9519

Office of Regulatory Services**Long-Term Care Section**

(to file a complaint)
2 Peachtree Street NW, 31st Floor
Atlanta, GA 30303-3167
(404) 657-5726

**Department of Human Resources
Office of Legal Services**

(to request a hearing on a complaint)
2 Peachtree Street NE, 29th Floor
Atlanta, GA 30303-3167
(404) 656-4421

Local Resources

You may contact the local Long-Term Care Ombudsman Program by calling the office of the State Long-Term Care Ombudsman, or contact the Elderly Legal Assistance Program (for people over 60) through the Legal Services Developer or the local Georgia Legal Services Program. You may receive other assistance (including information about Medicaid eligibility) by contacting your county Department of Family and Children Services office.

290-5-39-.02 Administration.

(1) Each facility shall establish written policies and procedures to provide that it complies with these rules and regulations and provides for implementation of these rules and regulations at the facility. Such written policies and procedures shall not conflict with the intent of the Act nor these rules and regulations and shall not be more restrictive than these rules and regulations except where specifically provided.

(2) Each facility must conduct training or make provision for the training of all staff on a quarterly basis, and for new staff, as employed. The content of the training may vary from quarter to quarter as long as it provides that all staff are familiar with the Long-term Care Facilities: Residents' Bill of Rights. (Ga. Code Ann., Chapter 88-19B) and these rules and regulations. Such training may be combined with any other quarterly training required to be done for staff of long-term care facilities. The facility shall document the dates, topics, and staff attending such training.

(3) Each facility must provide a written explanation of the rights, grievance procedures, and enforcement procedures to each resident and guardian, or representative if the resident does not have a guardian.

(4) A facility must bill for all charges at least once each month, unless otherwise agreed to in writing by the facility and the resident or guardian. Each bill must itemize charges for daily or monthly rates and for all extra charges.

(5) Each facility must post in the most frequented and conspicuous places, accessible to all residents, notices of residents' rights prepared by the Department.

(6) Copies of these rules and regulations shall be kept by the facility and shall be available for examination by any resident, guardian or representative.

(7) Upon the request of the resident, guardian or representative, the facility shall provide such person making the request with the name, address and telephone number of the resident's physician.

(8) Each resident or guardian shall be entitled to have reported promptly to persons of the resident's choice significant changes in the resident's health status. A resident or guardian

who desires that family members or other persons of their choice be notified in the case of significant changes in the resident's health status shall either:

(a) Notify the administrator in advance that he desires that certain persons be notified in the event of any significant change in the resident's health status, with such notification being made part of the resident's personal file; or

(b) If such advance notification has not been given, a resident or guardian may inform the physician or administrator at any time that he desires that certain persons be notified of significant current changes. In the case of a resident unable to communicate who does not have a legally appointed guardian, the physician or administrator shall immediately contact family members or other interested persons concerning any significant change in the resident's health status.

(9) Upon a resident's request or a request of his or her guardian or representative, the facility must provide him or her with a current list of all services and charges. Current charges must be posted in the most frequented places, conspicuous, and accessible to all residents.

(10) The facility must inform each resident in writing, at least 30 days in advance of the effective date of any changes in the rates or the services that these rates cover.

(11) Each resident or his guardian or authorized representative shall be entitled to inspect and receive a copy of the resident's non-medical records kept by the facility. The facility may charge a reasonable fee for duplication, not to exceed actual cost.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1904B, 1906B, 1913B, 1914B, 1924B).

Administrative History. Original Rule entitled "Administration" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.03 Notification of Rights.

(1) At or before being admitted to a facility, each resident and guardian, or representative if there is no guardian, must be given a copy of the written explanation of the resident's rights, grievance procedure and enforcement procedures. A staff member must also orally explain to such persons the resident's rights, grievance procedures and enforcement procedures. Written acknowledgement of this written and oral explanation must be given by the resident, or in the case of a resident unable to give a written acknowledgement, by the resident's guardian or representative if there is no guardian. Such written acknowledgement shall be kept in the resident's file.

(2) At the time of admission to a facility, each resident, guardian, or representative must be provided with the following information in writing:

(a) The basic daily or monthly rate of the facility for the level of care to be received by the resident;

(b) A list of the services of the facility. Such list must show which services are offered as a part of the daily rate and which services are offered on an as-needed basis along with the

related charges for such services. Such list must also show which services are not covered under Medicare or Medicaid programs and for which there are extra charges;

(c) A statement disclosing the facility's name and business address and the administrator's name and business address. The statement should also disclose that upon request at any time during normal business hours, a resident or a person applying to be a resident must be given a current copy of the annual disclosure statement filed with the Department of Medical Assistance.

(d) Notice of right of access to the written policies and procedures of the facility adopted pursuant to .02(1) of these rules and regulations during normal business hours;

(e) The right to select at admission or to change at any time, the pharmacy or pharmacist of the resident's choice for those pharmaceutical supplies and services not provided as a part of the facility's basic rate. If the facility uses a specific type of unit dose drug system,

any pharmacy or pharmacist chosen by the resident must be able to provide pharmaceuticals under such a system. Such notice at the time of admission shall also include a list of which pharmaceutical supplies and services are not provided by the facility.

(3) Provisions of these rules and regulations shall apply to current as well as future residents.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1906B, 1913B, 1915B, 1919B, 1924B).

Administrative History. Original Rule entitled "Notification of Rights" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.04 Citizenship and Personal Choice.

Residents shall be free from any duty to perform services for the facility and must be permitted to exercise all rights of citizenship and of personal choice in accordance with the following:

(a) All residents legally eligible to vote must be permitted to vote in all primary, special and general elections and in referenda. If requested by the resident, the facility must assist in obtaining voter registration forms, applications for absentee ballots and in obtaining

such ballots and assist the resident in meeting all other legal requirements in order to be able to vote. The facility shall not interfere with nor attempt to influence the actual casting of the resident's vote.

(b) All residents must be free to practice their religion and religious beliefs as they choose. All residents must also be free from the imposition, by the facility or any of its employees, of any religious beliefs and practices if they so choose.

(c) All residents must be free to associate, meet and communicate in private with persons of the resident's choice. Residents must be permitted to participate in social, familial, religious, and community group activities of their choice either on or off of the facility grounds, provided that if such event occurs off the facility grounds, the right to leave the facility shall be subject to .10 of these rules and regulations.

(d) All residents shall be permitted (subject to .10 of these rules and regulations) to rise and retire at any time of their choice, provided the resident does not interfere with the rights of others.

(e) Subject to applicable state law and the written policies of the facility given and explained to the resident, guardian and/or representative at the time of admission, all residents must be permitted to use tobacco and to consume alcoholic beverages, as long as the resident does not interfere with the rights of others. This right is subject to .10 of these rules and regulations. Residents shall be notified 30 days in advance of any change in the facility's policies affecting the use of tobacco or consumption of alcoholic beverages;

(f) Subject to .10 of these rules and regulations, all residents must be free to enter and leave the facility grounds as the resident chooses. If the facility desires, as stated in its written policies, it may require a resident to inform the facility at the times he is leaving and re-entering the facility grounds.

(g) The facility must have visiting hours of at least 12 continuous hours in any 24-hour period, seven days a week.

(h) Visitors must be granted access to residents during normal visiting hours provided that each visitor entering a facility promptly discloses his presence and identifies himself

to the person in charge and enters the immediate living quarters of a resident only after identifying himself and receiving permission to enter. Place of visitation shall be any place of the resident's choice so long as it does not disrupt the normal operation of the facility or disturb the other residents. Residents may terminate visits at any time. The person in charge may refuse a visitor access or require such a visitor to leave only if:

1. The person in charge has reason to believe that the presence of such visitor would result in severe harm to a resident's health, safety or property; or
2. Access is sought for financial solicitation or commercial purposes; or
3. A resident does not wish such visitor to stay. If access by a visitor is denied, the person in charge shall document such denial, along with the reasons therefore. This section does not limit the power of any public agency, ombudsman, persons from Federally mandated advocacy programs, or other persons permitted or required by state or federal law to enter or inspect a facility.

(i) Residents must be permitted to form resident councils to address any issues they may feel are appropriate or for other purposes and to meet without staff, if residents so desire. The facility must provide sufficient space for meetings of such resident councils and shall assist in attending such meetings those residents who request such assistance. The facility shall not compel the attendance of any residents at such meetings.

(j) Each resident must be permitted to voice complaints and recommend changes in policies, procedures, and services to the administrator, his or her designee, or the residents' council.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1907B, 1908B, 1911B, 1918B, 1920B, 1924B).

Administrative History. Original Rule entitled "Citizenship and Personal Choice" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.05 Privacy.

All residents shall enjoy privacy in their rooms and in their portions of any room which they share.

(a) Staff shall not enter a resident's room without first making their presence known before entering unless such staff member has reason to believe that the resident is asleep or it is an emergency which threatens the health or safety of the resident or unless it is required by the resident's care plan and documented in said plan.

(b) A resident shall be entitled to an available private room and a personal sitter if the resident pays the difference between the facility's charge for such a room and/or sitter and the amount reimbursed through Medicaid or Medicare provided that this provision is not prohibited by overriding Federal law or regulations.

(c) A resident shall have the right to visit privately with the resident's spouse. A resident and spouse shall be permitted to share a room if both are residents of the facility and space permits. (d) Residents shall enjoy the right of freedom from eavesdropping, and the right to unimpeded, private and uncensored communication with anyone of the resident's choice

by mail, telephone and visit. The administrator shall provide that mail is received and mailed on regular postal days. Public telephones must be available and accessible to

residents, including those in wheelchairs, and must permit and be conducive to private conversation. Residents shall have the right to refuse any telephone call or correspondence. Such refusal shall be documented in the resident's file.

(e) The facility must provide at least one place for private visitation during normal visiting hours. This place must be provided in addition to the residents' rooms.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1911B, 1924B). Administrative History. Original Rule entitled "Privacy" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.06 Management of Personal Property and Financial Affairs.

(1) Each resident must be permitted to retain and use his/her personal property in his/her immediate living quarters subject to space limitations and state and federal safety laws and regulations.

(2) Upon request, the facility shall provide a means of securing the resident's property in his/her room or another convenient location in the facility, subject to the following:

(a) The resident must have access to the secured items at least during all normal business hours and where facility policy allows, on weekends and holidays;

(b) The facility shall keep an updated written record of all personal belongings which an resident has requested that the facility keep in a secure place.

(3) The facility shall have procedures for investigating complaints and allegations of thefts of residents' property. Such procedures must provide that the facility promptly investigate complaints of theft, and the facility report the results of its investigation to the complainant within two weeks.

(4) All payments made to or on behalf of a resident, regardless of the source, shall be used only for the benefit of that resident, unless state or federal law provides otherwise.

(5) Every resident or guardian shall be permitted to manage his own financial affairs. The facility may establish a personal account, consistent with federal regulations, for each resident at the facility. The resident or guardian may authorize the administrator or designated employee of the facility to help in managing the resident's financial affairs subject to the following:

(a) The resident or guardian must authorize the facility in writing to help in the management of all or the part specified of the resident's finances. Such written authorization must be kept in the resident's file;

(b) The facility may expend funds for the resident only at the specific written or oral request of the resident or guardian and only for the purpose designated by the resident or guardian.

(c) The resident or his guardian shall be given any portion or all of the resident's funds upon request of the resident or guardian. The resident or guardian may authorize in writing a representative to withdraw funds from the resident's account. Such authorization must contain a specific amount permitted to be withdrawn and the date such authorization expires.

(d) A current written record of all financial arrangements and transactions made to or on behalf of the resident must be maintained by the facility either individually in each resident's file or individually in a separate file for all transactions made to or in behalf of each resident. A resident or guardian shall be permitted to inspect and duplicate at cost such current record for that resident.

(e) The facility shall issue to each resident or guardian a written quarterly statement, and prior to any change in ownership of the facility, showing the current balance and an itemized listing of all transactions made to or on behalf of the resident.

(6) Funds received from a resident on his behalf may be deposited in an interest bearing account. All funds not needed for the ordinary use by a resident on a daily basis above \$150.00 per resident must be kept in an account insured by agencies of or corporations chartered by the state or federal government. Such account must clearly show that the facility has only a fiduciary interest in the funds in such account. All interest earned upon such account must accrue to the resident, with each resident being credited with the portion of the interest attributable to his portion of the account.

(7) To guarantee the security of residents' funds, each facility shall obtain an irrevocable letter of credit from a bank or savings and loan association, as defined in Code Section 7-1-4, or purchase a surety bond at least equal to the amount of all funds in the residents' accounts maintained by the facility.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann.. 88-1909B, 1912B, 1924B); O.C.G.A. Sec. 31-8-100.

Administrative History. Original Rule entitled "Management of Personal Property and Financial Affairs" was filed on February 5, 1982; effective February 25, 1982. Amended: F. Aug. 22, 1991; eff. Sept. 11, 1991.

290-5-39-.07 Resident Care and Treatment.

Each resident must receive care, treatment and services which are adequate and appropriate for the condition of the resident, as determined by periodic review of each resident's treatment plan. Such care, treatment, and services must be provided with reasonable care and skill and in compliance with all applicable laws and regulations and with the goal of the resident's return home or to a less restrictive environment.

(a) The quality of a particular service or treatment must be the same to all residents without regard to the source of payment for such service or treatment. In particular, the quality of care provided to a resident whose care is being paid for from Medicaid or Medicare funds must be that same quality of care provided to those residents whose care is being paid for from other sources.

(b) Care, treatment and services must be provided with respect for the resident's personal dignity and privacy subject to the following:

1. All aspects of a resident's medical, personal and bodily care program shall be conducted in private and kept confidential. Any persons not directly involved in the particular aspect of care being provided to a resident must have the resident's permission to be present at the time that component of the resident's care is being provided; 2. A resident's personal and medical records must be kept confidential. Only the resident or guardian may approve the release or disclosure of such records to persons or agencies outside the facility which must be in writing, unless it is a case of the resident's transfer to another health care facility or during Medicare, Medicaid, licensure, medical care foundation, or peer review surveys, or as otherwise provided by law or third-party payment contract;

3. Each resident or guardian shall have the right of access to all information in the medical and personal records of that resident and to have given to him by the physician a complete and current explanation of his medical diagnosis, treatment and prognosis in language the resident can understand. Each resident or guardian shall have the right to inspect and receive a copy of such records unless said right is suspended in accordance with .10 of these rules and regulations. The facility may charge a reasonable fee for duplication of the medical records, not to exceed actual cost.

(c) Each resident or guardian shall be entitled to choose or change at any time the resident's physician(s). A physician so chosen shall inform the resident in advance whether or not the physician's fees can be paid for by Medicaid, Medicare, or from any other public or private

benefits and agree to and provide documentation to any third party payor as required by law, regulations or contract.

(d) The resident or guardian shall be entitled to participate in the development of the resident's care plan and in the provision of treatment under the plan. The resident or guardian shall be informed of the right to participate in the planning of care and treatment each time a substantial change in the treatment is needed.

(e) A resident shall not take part in any experimental research or be the recipient of any experimental treatment unless informed written consent (consistent with Ga. Code Ann., Chapter 88-29) is given by the resident or guardian. Such written consent shall be made a part of the resident's medical record.

(f) Subject to the resident's choice of pharmacy or pharmacist, pursuant to .03(2)(e) of these rules and regulations, each resident shall receive pharmaceutical supplies and services at reasonable prices not exceeding applicable and normally accepted prices for comparably packaged pharmaceutical supplies and services within the community.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1911B, 1914B, 1915B, 1924B).
Administrative History. Original Rule entitled "Resident Care and Treatment" was filed on February 5, 1982; effective

February 25, 1982.

290-5-39-.08 Refusal of Medical Treatment, Dietary Restrictions and Medications.

Each resident or guardian shall have the right to refuse any aspect of medical treatment, dietary restriction or any medication, subject to the following:

(a) When a resident or guardian makes such refusal such person shall be notified by the appropriate facility staff person or physician of the immediate and possible long-term consequences of the refusal. The refusal shall be documented in the resident's record as shall the possible consequences of the refusal, and the resident's physician shall be notified as soon as practical.

(b) If such refusal would result in serious injury, illness or death, the facility shall:

1. Promptly notify the resident's physician and if serious injury, illness or death is imminent, transport the resident to a hospital; and
2. Notify the resident's guardian, representative or responsible family member in that order of priority or if no such persons are immediately available, notify the director of the County Department of Family and Children Services or his designee. The director or designee shall document such notification and take appropriate protective measures.

(c) If such refusal would result in injury, illness or death to any other person, such resident or guardian shall not enjoy this right of refusal. The likelihood of injury, illness, or death to any other person must be documented in the resident's records by the resident's physician.

(d) Any facility or employee of a facility acting in accordance with this section shall be immune from all liability resulting from such refusal in accord with Ga. Code Ann; 88-1914B.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann 88-1914B, 1924B). Administrative History. Original Rule entitled "Refusal of Medical Treatment, Dietary Restrictions and Medications" was filed on February

5, 1982; effective February 25, 1982.

290-5-39-.09 Use of Restraints, Isolation or Restrictions.

Each resident must be free from actual or threatened physical restraints, isolation or restrictions on mobility within or outside the facility grounds, including the use of drugs to limit mobility, activity and functional capacity or the use of any other restrictions, except to the minimum extent necessary to protect the resident from immediate injury to the resident or to any other person. Restraints are defined to include, but not limited to, any contrivance, situation, safety device, or medication that has the purposeful or incidental effect of restricting a resident's mobility within or outside of the facility grounds. All authorization and use of restraints, restrictions, or isolation must be documented in the resident's medical file.

(a) Restraints, restrictions, or isolation may not be used for punishment, incentive, behavior conditioning or modification, convenience of the facility or any purpose other than to protect the resident from immediate injury to himself or to any other person.

(b) Except in an emergency situation described in subsection (c) of this rule, below, restraints, restrictions, or isolation must be authorized as follows:

1. Prior to authorizing restraints, restrictions, or isolation, the attending physician shall make a personal examination and individualized determination that such restraint, restriction, or isolation is necessary to protect the resident or other persons from immediate injury; and

2. The physician shall specify the length of time for which such restraint, restriction, or isolation is authorized. Such authorization may not exceed 65 days for intermediate care home residents or 35 days for skilled nursing home residents, but in no event shall such restraint, restriction, or isolation be used beyond the period of actual need to protect the resident or other persons from immediate injury. Any period beyond that specified shall be regarded as a new period and all requirements for the use of such restraints, restriction or isolation must be met.

(c) In an emergency situation severely threatening the health or safety of the resident or others, restraints, restrictions, or isolation may be authorized only by the person in State charge. In an emergency situation, restraints, restrictions or isolation may be used only for 12 hours from the time of onset of the emergency situation. Beyond the 12-hour period, restraints, restrictions, or isolation may not be used unless it is in accordance with subsection (b) of this rule.

(d) The resident and guardian or persons designated by the resident, if any, shall be immediately informed of the need for such restraints, restrictions or isolation, the reasons for such use, and the time specified for such use.

(e) A restrained or isolated resident shall be monitored by staff at least every hour. A restrained or isolated resident must be released and exercised every two hours except during normal sleeping hours. Such activities shall be documented in the resident's record.

(f) A resident who is restrained, restricted or isolated pursuant to this section shall retain all other rights and responsibilities provided by these rules and regulations.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1916B, 1924B). Administrative History. Original Rule entitled "Use of Restraints, Isolation or Restrictions" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.10 Temporary Suspension of Rights. Convenience to the facility shall not justify the suspension of any rights to individual residents.

(a) Only the following rights may be temporarily suspended:

1. The right to rise and retire as the resident chooses, pursuant to .04(d) of these rules and regulations;
2. The right to use tobacco and consume alcoholic beverages, pursuant to .04(e) of these rules and regulations;
3. The right of access to his own medical records and explanation of condition, treatment and diagnosis, pursuant to .07(b)3 of these rules and regulations; and
4. The right to enter and leave as desired, pursuant to .04(f) of these rules and regulations.

(b) The above rights may be temporarily suspended only after the following:

1. The physician must personally examine the resident and document in the resident's file that the exercise of such right or rights endangers the health or safety of other residents or imposes an immediate and substantial danger to the resident;
2. Prior to or at the time of such suspension, the resident and guardian or representative if there be no guardian, shall be notified of such suspension, its duration and of the resident's right to meet with legal counsel, ombudsman, family members, his guardian, or any other person of the resident's choice;
3. If the threatened danger is only to the resident and not to the health or safety to other residents, and the resident has had the reasons for the proposed suspension fully explained to him along with the danger if that right is exercised, the resident's rights shall not be suspended pursuant to this regulation if the resident or guardian understands the danger and insists on the exercise of the right. This fact must be documented in the resident's file.

(c) A temporary suspension of rights may be authorized for a maximum of 65 days for residents of intermediate care homes and for 35 days for residents of nursing homes. In no event shall the suspension of such right or rights be authorized for a period longer than

actual need. Any additional period shall be considered a new suspension, for which all provisions and requirements of this section shall be met.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1918B, 1924B). Administrative History. Original Rule entitled "Temporary Suspension of Rights" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.12 Contributions to the Facility.

No resident, resident's family, guardian or representative shall be coerced directly or indirectly into contributing to a resident, facility, staff person, or corporation or agency with any financial interest in the facility.

(a) Free will contributions may be made for general or restricted purposes. When free will contributions are made by a person for a restricted purpose, such contribution must be used only for the purpose so designated.

(b) When a free will contribution is made, a signed receipt shall be issued to the person making the contribution and shall contain the following information:

1. The name of the person making the contribution;
2. The date the contribution is made;
3. The amount and type of the contribution;
4. The restricted purpose, if any, for which the contribution is intended.

(c) The facility shall keep in a central file, copies of all receipts issued in accordance with section (b) of this rule.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1919B, 1924B).

290-5-39-.13 Nondiscrimination.

(1) Each resident or person requesting admission to a facility shall be free from discrimination by the facility through its refusing admission or continued residency on the basis of the resident's or applicant's history or condition of mental or physical disease or disability unless either:

(a) Such admission would cause the facility or any resident or applicant to lose eligibility for any state or federal program of financial assistance; or

(b) The facility cannot provide adequate and appropriate care, treatment, and services to the resident or applicant due to such disease or disability, provided such exclusion is not contrary to federal or state law and regulation prohibiting such discrimination nor contrary to federal or state law or regulation requiring that care must be provided if the facility participates in a financial program requiring such admittance or continued residency.

(2) A facility shall not discriminate in the provision of a service to a resident based upon the source of payment for the service.

(3) No person shall be discriminated against as to admission or continued residency on the basis of the person's choice of pharmacy, pharmacist and/or physician.

(4) No person shall be discriminated against as to admission or continued residency and as to care, treatment and services on the basis of failure or refusal by the resident, guardian or representative to make contributions to a resident, facility, staff person, or corporation or agency with a financial interest in a facility.

(5) No person shall be discriminated against in any manner whatsoever for exercising any of the rights described in these rules and regulations, nor shall any form of restraint, interference, or coercion be used against any person for exercising any of the rights described in these rules and regulations.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1910B, 1914B, 1915B, 1919B, 1924B). Administrative History. Original Rule entitled "Nondiscrimination" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.14 Grievance Procedure.

Any resident, guardian or representative who believes his rights or, in the case of a guardian or representative, the rights of the resident, have been violated, may present a grievance. The grievance procedure shall be in accordance with the following:

(a) The facility shall maintain a confidential central file of documents and materials pertaining to grievances. Any resident, guardian or representative shall be free to review any document or materials pertaining to that resident. All documents and materials pertaining to grievances shall be available to the Department.

(b) To initiate a grievance, the resident, guardian, or representative must submit an oral or written complaint to the administrator or his designee, who, in the event of an oral complaint, shall promptly reduce the substance of the complaint to writing. The administrator shall also promptly act to resolve the complaint. If the complaint is not resolved within three business days, the administrator or designee shall give a written response to the complainant. The content of such response shall include:

1. The names of the complainant and of the person making the written response;
2. The date the grievance was commenced and the date of the written response;
3. A complete description of the complaint;
4. The facility's position in regard to the complaint; and
5. A description of the review and appeal rights including the name and telephone number of the community ombudsman or state ombudsman, if there is no community ombudsman.

(c) If the complainant is not satisfied with the resolution or written response of the administrator or designee, he shall submit an oral or written complaint to the community or state ombudsman, pursuant to Ga. Code Ann., Chapter 88-19A.

(d) If the ombudsman is unable to resolve the grievance to the complainant's satisfaction within 10 calendar days of submission to such ombudsman, the complainant may submit the grievance to an impartial referee, jointly chosen by the administrator or his designee

and the complainant. The referee may be any person who is mutually acceptable to the complainant and the administrator or designee.

(e) Within 14 calendar days after the complainant has requested a hearing before an impartial referee, such hearing shall be held at a time convenient to the administrator, complainant and referee and such hearing shall be held at the facility. The complainant and the administrator may review relevant records and documents, present evidence, call witnesses, cross-examine witnesses, make oral arguments, and be represented by any persons of their choice. The referee may ask questions of any person, review relevant records and documents, call witnesses, and receive other evidence as appropriate. The referee shall keep a record of the proceedings, which may be a sound recording. In the event that the complainant and the administrator/designee cannot agree upon an impartial referee within seven calendar days after the complainant has requested a referee's hearing, the complainant shall have the right to an administrative hearing pursuant to .15 of these rules and regulations.

(f) Within 72 hours after the hearing before the referee, the referee shall render a written decision, on forms to be provided by the Department. Copies of the decision shall be given to the complainant, to the administrator for filing in the central file for that purpose, and a copy shall be sent to the Department. The decision shall be divided as follows:

1. Contentions of the parties;
2. Findings of the relevant and significant facts;
3. Decisions of the referee as to whether a violation of resident's rights has occurred, along with a recommendation to the Department for corrective action and the date by which the correction should be made; and
4. A complete description of the right and manner in which to appeal the referee's decision in accordance with .15 of these rules and regulations

(g) The decision of the impartial referee shall be binding upon all the parties unless reversed upon appeal.

(h) If a resident or complainant is unable for any reason to understand any writing or communication pertinent to this section, such information shall be communicated to him in a manner that takes into account any communication impairment he may have.

(i) A resident, guardian or representative who elects not to proceed under this section shall not be prohibited from proceeding under .15 or .16 of these rules and regulations. Nothing in these rules and regulations is meant to modify or diminish any complaint procedure set up or in operation pursuant to Ga. Code Ann., Chapter 88-19A.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1903B, 1921B, 1924B).
Administrative History. Original Rule entitled "Grievance Procedure" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.15 Administrative Hearing.

Any resident, guardian or representative or administrator who is dissatisfied with the decision of the impartial referee or any resident, guardian or representative who is unable to agree upon an impartial referee, or who believes that any of his rights under these rules and regulations have been violated, shall have the right to request a hearing from the Department pursuant to the Georgia Administrative Procedure Act (Ga. Code Ann., Chapter 3A-1, as amended) in conjunction with the statute, Long-term Care Facilities: Residents' Bill of Rights. (Ga. Code Ann., Section 88-1922B(a)).

(a) The Department is authorized to hold such hearings and in the cases of an appeal from the decision of a referee, the Department may hold such hearings by review of the record of the hearing provided by the referee.

(b) A person desiring a hearing under this section may request such a hearing in writing to the Department. The request shall include the person's name, the name of the facility and the reason the hearing is requested. The request shall be mailed or delivered to the Department of Human Resources.

(c) The hearing shall be conducted within 45 calendar days of the receipt by the Department of the request for the hearing. The Department shall send written notice to the administrator and complainant confirming the date, time and location (which shall be the facility unless the resident's medical condition requires a different location) of the hearing. Except where the ombudsman has been unable to resolve the matter at issue, the Department shall refer the complaint to the state or community ombudsman for informal resolution pending the hearing.

(d) Except in the event of an emergency situation in which the resident or other residents are subject to imminent and substantial danger that only immediate transfer will reduce, or except in case of nonpayment under subsection .11 (2)(c), of these rules and regulations, no transfer shall take place until all appeal rights are exhausted. However, if a resident is transferred before exhaustion of all appeal rights, such resident in no way relinquishes any appeal rights under these rules and regulations.

(e) Where two or more residents in a facility allege a common complaint, the Department may, at the resident's request, schedule a common hearing.

(f) The decision of the hearing officer shall be made within 30 calendar days from the date of the hearing and shall be based upon whether or not a violation has been found.

The decision shall be divided as follows:

1. The issues to be decided;
2. A summary of any actions already taken;
3. The contentions of the parties;
4. The findings of the hearing officer including whether a violation has occurred;
5. If a violation has occurred, the corrective action to be taken, and the date by which such corrective action shall be taken; and

6. The right to appeal the decision to the Superior Court of the county in which the facility is located or as provided otherwise by law.

(g) Upon the failure to correct any violations found within the time specified, the Department may impose appropriate civil penalties as provided in .16 of these rules and regulations.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1922B, 1924B). Administrative History. Original Rule entitled "Administrative Hearing" was filed on February 5, 1982; effective February 25, 1982.

290-5-39-.16 Enforcement.

Any person or persons aggrieved because a long-term care facility has violated or failed to provide any rights granted under Ga. Code Ann., Chapter 88-19B or these rules and regulations shall have a cause of action against such facility for damages and such other relief as the court having jurisdiction of the action deems proper. No person shall be prohibited from maintaining such an action for failure to exhaust any rights to administrative or other relief granted under Ga. Code Ann., Chapter 88-19B or these rules and regulations. In addition to all other penalties or remedies that may be imposed by these rules and regulations, or any state or federal law, the Department is authorized to impose civil penalties as follows:

(a) If a violation has occurred, the Department shall order the facility to correct such violation by a specified date. It shall be presumed for the purposes of this section that a violation has occurred when any of the following findings are made:

1. An impartial referee has rendered a decision pursuant to subsection .14(f)3 that a violation has occurred and such finding is not reversed upon appeal; or
2. A hearing officer determines pursuant to subsection .15(f) that a violation has occurred and such finding is not reversed upon appeal; or
3. A superior court judge, pursuant to an action under Ga. Code Ann., Section 88-1923B(a), finds that a facility has violated or failed to provide any rights under Ga. Code Ann., Chapter 88-19B, and such finding is not reversed upon appeal; or
4. The Department determines in any inspection, required or permitted by law or regulation that a violation has occurred.

(b) If an impartial referee, hearing officer, superior court judge, or the Department finds a violation pursuant to section (a) of this rule, the facility shall correct such violation within the time specified by the Department. If the facility does not correct the violation within the time specified or within a reasonable time, as established by the Department, the Department shall have the power to order the facility to discontinue admitting residents to such facility until such violation has been corrected. The Department shall have the authority to visit and inspect the facility to determine if a known or alleged violation has been corrected.

(c) In cases of violation repeated by a facility under the same license within a 12-month period, the Department may assess a civil penalty not to exceed \$75.00 per violation for each day in which the violation continues, except that the maximum civil penalty for each violation within a 12-month period shall not exceed \$2,500.00. If a facility commits a violation against an individual or group of individuals and commits the same violation within a 12-month period against another individual or group of individuals, such violation shall be considered a repeat violation for the purpose of imposing civil penalties under this section. In imposing such civil penalties, the Department shall consider all relevant factors including, but not limited to:

1. The amount of assessment necessary to insure immediate and continued compliance;
2. The character and degree of impact of the violation on the health, safety, and welfare of any resident in the facility;
3. The conduct of the person or facility against whom the citation is issued in taking all feasible steps or procedures necessary or appropriate to comply or to correct the violations;
4. Any prior violations by the facility of statutes, regulations, or orders administered, adopted, or issued by the Department.

(d) No civil penalty shall be collected by the Department until notice and opportunity for hearing are afforded pursuant to Ga. Code Ann., Section 88-304(b). Any person or facility subject to a civil penalty is entitled to review pursuant to Ga. Code Ann., Section 88-305. Nothing in these regulations shall be construed to preempt any other law or regulations or to deny any rights or remedies which are provided under any other law or regulations.

(e) All civil penalties recovered by the Department shall be paid into the State Treasury.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1923B, 1924B). Administrative History. Original Rule entitled "Enforcement" was filed on February 5, 1982; effective