

MAINE

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CHAPTER 2-OBTAINING A LICENSE

2.K. Availability of Survey Results

Facilities will have the results of State and Federal surveys, which include the plan of correction, in a place readily accessible to residents, resident representatives and the general public and must post a notice of their availability. Copies of these may be provided by the facility upon reasonable request.

CHAPTER 6

CONTRACTS WITH RESIDENTS

6.A. Contract Between Resident and Representative of Facility

The presence of each resident admitted after the effective date of these regulations in a licensed facility shall be covered by a standardized contract executed at the time of admission, or prior thereto, by the resident or legal representative and the licensed facility (see Appendix A of these Regulations). Each party to such contract shall be entitled to a copy thereof and the licensed facility shall keep on file all contracts which it has with residents. The licensed facility shall not destroy or otherwise dispose of any such contract except as otherwise permitted by law.

6.B. Provisions of Contract

Each contract to which this section applies shall contain express provisions specifically setting forth the following:

6.B.1. The services and accommodations to be provided by the facility and the rates and charges therefor, including an outline of responsibilities for and payment of treatment and medications, special equipment and appliances, dressings, clothing, personal supplies of the resident; services of related medical and paramedical personnel; and any other related charges not covered by the facility's basic per diem rate;

6.B.2. The identity of the person or party who is to be responsible for personal funds of the resident, including the name, address and telephone number of the person to be responsible, if other than the resident or an agent of the facility;

6.B.3. The specification of any rights, duties and obligations of both residents and the facility in addition to those required by law;

6.B.4. Provision that a resident may obtain medical care from any qualified institution, agency or person of his/her choice, as long as that health care provider complies with any applicable laws or rules concerning the provision of care to the resident and with the reasonable policies of the facility;

6.B.5. Provision that a resident may obtain medication from any qualified pharmacy, as long as that pharmacy complies with any applicable State rules and federal regulations and with the reasonable policies of the facility concerning procurement of medication;

6.B.6. The established procedures to be followed in an emergency which cover immediate care of the residents, persons to be notified and reports to be prepared; 6.B.7. Those facilities that decide to use the Standardized Contract, without any additions, are considered to meet State licensing requirements for contracts with residents. The standardized contract may contain any other provisions in a separate addendum/rider, which do not violate State law or rule or federal law or regulation and that are specifically allowed by the standardized contract found in Appendix A of these Regulations.

6.B.8. Provision for addressing discharge potential and planning.

6.C. Contract Requirements

Each contract or agreement is subject to the following requirements:

6.C.1. No contract or agreement may contain a provision for the discharge or transfer of a resident to another facility or another room within the same facility which is inconsistent with State law or rule.

6.C.2. Each contract or agreement shall contain a complete copy of the department rules establishing residents' rights and shall contain a written acknowledgment that the resident has been informed of those rights. In the case of a person who is adjudicated incompetent, the written acknowledgment of those rights shall be made by a representative of the resident. No provision in the contract or agreement may negate, limit or otherwise modify any provision of the residents' rights.

6.C.3. No provision of a contract or agreement may require or imply a lesser standard of care or responsibility than is required by law or rule.

6.C.4. No provision of a contract or agreement may state or imply a lesser degree of responsibility for the personal property of a resident than is required by law or rule.

6.C.5. No contract or agreement may require the resident to sign a waiver of liability statement as a condition of discharge, even if the discharge is against medical advice. This does not prohibit a facility from attempting to obtain a written acknowledgment that the resident has been informed of the potential risk in being discharged against medical advice.

6.C.6. Each contract or agreement shall contain a provision which provides for at least thirty (30) days notice prior to any changes in rates and/or charges, responsibilities, services to be provided or any other items included in the contract or agreement.

6.C.7. No contract or agreement may require the resident to authorize the facility or its staff to manage, hold or otherwise control the income or other assets of a resident.

6.C.8. No contract or agreement may contain any provisions which restrict or limit the ability of a resident to apply for and receive Medicaid or which require a specified period of residency prior to applying for Medicaid. The resident may be required to notify the facility when an application for Medicaid has been made. No contract or agreement may require a

deposit or other prepayment from Medicaid recipients. No contract or agreement may refuse to accept retroactive Medicaid benefits.

6.C.9. Medicaid Payment is payment in full when the person's Medicaid eligibility begins. Nursing facilities are required to refund any payment, within thirty (30) days, which was received from a resident or family member for the period of time that the Medicaid eligibility was pending and the resident is then determined eligible for Medicaid.

6.C.10. No contract agreement may contain a provision which provides for the payment of attorneys' fees or any other cost of collecting payments from the resident.

6.C.11. A nursing facility may require an identification photograph of each resident. Photographs may not be used for any other purpose without the permission of the resident for each specific use. The permission must indicate the specific purpose which the pictures are to be used for and, except for the identification photograph, may not be contained in the admission contract or agreement.

6.D. Obligations

The contract or any provision thereof shall not be construed to relieve any licensed facility of any requirement or obligation imposed upon it by Maine Statutes or any standards, rules or regulations pursuant thereto.

CHAPTER 7-RESIDENTS' PROPERTY AND FINANCES

7.A. Authority and Responsibility

7.A.1. Presence of Resident

The admission of a resident to a facility shall not confer on such facility or its owner, administrator, employees or representatives any authority to manage, use or dispose of any property of such resident, nor shall such admission or presence confer on any of the aforementioned persons any authority or responsibility for the personal affairs of the resident, except insofar as may be necessary for the safe and orderly management of the licensed facility.

7.A.2. Guardian, Trustee or Conservator

No facility, and no owner, administrator, employee or representative thereof or their relative shall act as guardian, trustee or conservator for any resident of such facility or any of such resident's property. Exceptions to this requirement may be considered by the Department for residents who are relatives of the owner, administrator, employee or representative of the licensed facility or their spouse within the third degree of kinship.

7.A.3. Safekeeping

A licensed facility shall provide for the safekeeping of personal effects, funds, and other property of the resident. For the protection of valuables, or in order to avoid unreasonable responsibility thereof, the facility may require that they be excluded or removed from the facility and kept at some place not subject to the control of the facility. Any removal or

exclusion shall be done only after reasonable notice is given to the resident or his/her guardian.

7.B. Protection of Resident Funds

The facility may not require residents to deposit their personal funds with the facility.

7.C. Management of Personal Funds

Upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility under a system established and maintained by the facility in accordance with this Chapter.

7.C.1. Permission to Manage Personal Funds

No operator or agent of any nursing care facility shall manage, hold or deposit in a financial institution the personal funds of any resident of the facility, unless the operator or agent has received written permission thereof from:

- a. The resident; or
- b. The resident's guardian, trustee, or conservator, if such person exists and can be reached; or
- c. The Department, if a guardian, trustee, or conservator exists, but cannot be reached.

7.D. Deposit of Funds

7.D.1. Funds in Excess of \$50

The facility must deposit residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on those accounts to the respective residents.

7.D.2. Funds Less Than \$50

The facility may maintain residents' personal funds that do not exceed \$50 in a non-interest bearing account or petty cash fund which is readily available upon request during normal business working hours.

7.E. Accounting and Records

The facility must establish and maintain a system that assures a full, complete and separate accounting, according to generally accepted principles, of each resident's personal funds, regardless of source, deposited with the facility on the resident's behalf.

7.E.1. A written quarterly accounting must be given to the resident or responsible party.

7.E.2. The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

7.E.3. The individual financial record must be available upon request to the resident or legal representative during normal business working hours.

7.F. Notice of Certain Balances

7.F.1. The facility must notify each resident who receives Medicaid benefits:

a. When the amount in the resident's account reaches \$200 less than the Social Security Supplemental Income resource limit for one person, and

b. That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the Social Security Supplemental Income resource limit for one person, the resident may lose eligibility for Medicaid or Social Security Supplemental Income.

7.G. Conveyance Upon Death

Upon death of a resident with a personal fund deposited with the facility, the facility must, within thirty (30) days, convey the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate; in the case of a resident with no responsible person, to the Public Administrator of the County.

7.H. Assurance of Financial Security

The facility must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

7.I. Limitation on Charges to Personal Funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made, or could be made, under Medicaid or Medicare or other third party insurance.

Resident Rights—Chapter 10

10.A. Written Policies

Written policies shall be established by the governing body of each facility regarding the rights and responsibilities of the residents.

10.B. Procedures

Procedures shall be developed and adhered to for training of facility staff concerning these policies and procedures, and for making the policies available to residents, to any guardians, next of kin, sponsoring agencies or representative payees.

10.C. Exercise of Rights

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including the following:

10.C.1. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

10.C.2. The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

10.C.3. In the case of a resident adjudicated incompetent under the laws of the State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

10.C.4. The facility must inform the resident, legal representative or family member, both orally and in writing, in a language that he or she understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the resident's stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information and any amendments to it must be acknowledged in writing.

10.C.5. The resident has the right to inspect all records pertaining to himself/herself, upon oral or written request, within twenty-four (24) hours. Photocopies may be purchased and the facility must provide them within two (2) working days of the request.

10.C.6. The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.

10.C.7. The resident has the right to limit and/or refuse treatment, and to refuse to participate in experimental research.

10.C.8. The facility must display information and:

a. Inform each resident how to apply for Medicaid;

b. Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or when the resident becomes eligible for Medicaid of:

1. The items and services that are included in nursing facility services in the Maine Medical Assistance Manual and for which the resident may not be charged.

2. Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services and,

c. Inform each resident when changes are made to the items and services specified in Chapters 10.C.8.b.1. and 10.C.8.b.2.

10.C.9. Inform each resident before, or at the time of admission, when changes occur, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicaid/Medicare or by the facility's per diem rate.

10.C.10. The facility must furnish to each resident, before or at the time of admission, a written description of legal rights which includes:

- a. A description of the manner of protecting personal funds, under Chapter 10.E.
- b. A statement that the resident may file a complaint with the Division of Licensing and Certification, the Bureau of Elder and Adult Services or the Long Term Care Ombudsman Program concerning resident abuse, neglect, and/or misappropriation of resident property in the facility and other violations of residents' rights.
- c. Information regarding Advance Directives as required by the Patient Self-Determination Act.

10.C.11. Inform each resident of the name, specialty, and method of contacting the physician responsible for his or her care.

10.D. Notification of Changes

10.D.1. Except in a medical emergency or when a resident is incompetent, a facility must consult with the resident regarding any proposed significant changes in treatment or plan of care. The facility must notify the resident's physician, the resident's legal representative and, with the resident's permission, an interested family member, when there is:

- a. An accident involving the resident which results in injury.
- b. A significant change in the resident's physical, mental, or psychosocial status.
- c. A need to alter treatment significantly, or
- d. A decision to transfer or discharge the resident from the facility.

10.D.2. The facility must also promptly notify the resident and with the resident's permission, the resident's legal representative or interested family member when there is:

- a. A change in room or roommate assignment
- b. A change in resident rights under Federal or State law or regulations.

10.E. Protection of Resident Funds

10.E.1. The resident has the right to manage his or her financial affairs. The facility may not require residents to deposit their personal funds with the facility.

10.E.2. The individual financial record and a quarterly summary must be available on request to the resident or his or her legal representative.

10.F. Free Choice

The resident has the right to:

10.F.1. Choose a personal attending physician.

10.F.2. Choose a provider pharmacy.

10.F.3. Be fully informed in advance about care and treatment that may affect the resident's well-being.

10.F.4. Participate in planning care and treatment or changes in care and treatment, unless adjudicated incompetent or otherwise found to be incapacitated under the laws of the State.

10.G. Privacy

10.G.1. The resident has the right to personal privacy and confidentiality of his/her personal and clinical records.

- a. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meeting of family and resident groups, but this does not require the facility to provide a private room.
- b. Except as provided in this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

10.G.2. The resident's right to refuse release of personal and clinical records does not apply when:

- a. The resident is transferred to another health care institution;
- b. Record release is required by law or by third-party payment contract; or
- c. Copies are requested by the Department.

10.H. Grievances and Complaints

A resident has the right to:

10.H.1. Voice grievances and complaints with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances or complaints. Such grievances include those with respect to treatment which has been furnished, as well as that which has not been furnished.

10.H.2. File a complaint and/or a grievance with the State survey and certification agency, the Long Term Care Ombudsman Program, Legal Services for the Elderly and the Bureau of Elder and Adult Services respective to abuse, neglect and/or misappropriation of resident property in the facility.

10.H.3. Prompt efforts by the facility to resolve grievances and/or complaints the resident may have, including those with respect to the behavior of other residents.

10.H.4. A written response to be provided whenever possible to the grievant, describing disposition of the complaint.

10.I. Examination of Survey Results

A resident has the right to:

10.I.1. Examine the results of the most recent State licensing and Federal certification survey of the facility and any plan of correction in effect.

10.I.2. Receive information from agencies acting as client advocates, and be afforded the opportunity to contact agencies.

10.J. Work

The resident has the right to:

10.J.1. Refuse to perform services for the facility.

10.J.2. Perform services for the facility, if he or she chooses, when:

- a. The facility has documented the need or desire for work in the plan of care.
- b. The plan specifies the nature of the services performed and whether the services performed are voluntary or paid.
- c. Compensation for paid services is at or above prevailing rates.
- d. The resident agrees to the work arrangement described in the plan of care.

10.K. Mail

The resident has the right to privacy in written communications, including the right to:

10.K.1. Send and receive unopened mail promptly.

10.K.2. Have access to stationary, postage, and writing implements at the resident's own expense.

10.K.3. Assistance provided to the resident upon request.

10.L. Access and Visitation Rights

The resident has the right to receive visitors. The facility must allow access to the resident for such visitors at any reasonable hour.

10.L.1. The resident has the right and the facility must provide immediate access to any resident by:

- a. Any representative of the Secretary of the Department of Health and Human Services.
- b. Any representative of the State.
- c. The resident's individual physician.
- d. A representative of the Long Term Care Ombudsman Program or other authorized advocate(s).
- e. Immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time.
- f. Others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

10.L.2. The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

10.L.3. The facility must allow representatives of the Long Term Care Ombudsman Program to examine a resident's clinical records with the oral or written permission of the resident or the resident's legal representative, and consistent with State law.

10.M. Telephone

The resident has the right to have regular access to the private use of a telephone. Amplification shall be provided for the hearing impaired.

10.N. Personal Property

The resident has the right to retain and use personal possessions including some furnishings and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. The facility must provide prior notification to the resident, legal representative or responsible person in the event that the resident's personal possessions must be searched in order to protect the health and safety of the resident or other residents.

10.O. Married Couples

The resident has the right to share a room with his/her spouse when married residents live in the same facility and both spouses consent to the arrangement.

10.P. Self- Administration of Drugs

The resident has a right to self-administer drugs when the interdisciplinary team has determined that this practice is safe.

...10.R. Physical or Chemical Restraints

The resident has the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of punishment for certain behaviors or to accommodate the needs of the staff, and is not required to treat the resident's specific condition.

10.S. Freedom From Abuse, Punishment or Involuntary Seclusion

The resident has the right to be free from neglect, verbal, sexual, physical or mental abuse and involuntary seclusion.

10.T. The resident has the right to:

10.T.1. Choose activities, schedules, and health care consistent with his/her interests, assessments, and plans of care.

10.T.2. Interact with members of the community both inside and outside the facility.

10.T.3. Make choices that are significant to the resident about aspects of his/her life in the facility.

10.U. Organization and Participation

10.U.1. A resident has the right to organize and participate in resident groups in the facility.

10.U.2. A resident's family has the right to meet in the facility with the families of other residents.

10.U.3. The facility must provide a resident or family group, if one exists, use of private space.

10.U.4. Staff or visitors may attend meetings only at the group's invitation.

10.U.5. The facility must provide a designated staff person responsible for providing assistance and responding to written requests resulting from group meetings.

10.U.6. When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families and report back to the group.

10.V. Residents' Council

10.V.1. Establishment and Composition

- a. The facility shall inform residents of their right to establish a council. This information shall be given to all residents or a family member or designated representative.
- b. The residents have the right to have assistance in establishing a council. The council shall select a staff member, not related to the administrator, to assist the residents' council.
- c. If there is no council, the facility must offer the residents, at least once a year, the choice to establish one by majority vote.
- d. Records of council meetings and decisions, if prepared, shall be disseminated by the council and kept on file in the facility.
- e. No employee or representative of the facility may be a member of the council or attend a meeting, unless requested by the group.
- f. Family members may sit in on the council, at the group's invitation, but shall not be members.
- g. Staff or visitors may attend meetings at the group's invitation.

10.V.2. Responsibilities and Purpose

- a. To review and make recommendations to strengthen the facility's policies and procedures relating to residents' rights.
- b. To establish procedures for informing all residents about their rights.
- c. To serve as a forum for obtaining and disseminating information, soliciting and adopting recommendations for facility programming and improvement and early identification of and recommendation for orderly resolution of residents' problems.
- d. To inform the administrator about the opinions and concerns of the residents.
- e. To find ways of involving the families of residents.

10.W. Participation in Other Activities

A resident has the right to participate in social, religious and community activities that do not interfere with the rights of other residents in the facility.

CHAPTER 17-PHARMACEUTICAL SERVICES

17.E.6. Self-Administration of Medications

An individual may self-administer medications if the multidisciplinary team has determined that the practice is safe, and with the written permission of the resident's attending physician.

CHAPTER 19-RECORDS

19.J. Access

The facility must:

19.J.1. Permit each resident and his/her authorized representative to inspect his or her records within twenty-four (24) hours of request. Such inspection shall occur at reasonable times and in the presence of a member of the facility's staff.

19.J.2. Provide copies of the records to each resident no later than two (2) business days after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

CHAPTER 20-PHYSICAL PLANT

20.A. Structure

20.A.1. Requirements for Each Facility

The facility must provide a safe, functional, sanitary and comfortable environment for residents, staff and the public.

Each licensed facility shall:

...p. Have a telephone accessible to, and useable by, every resident. The resident shall be afforded privacy to use the phone.