

## OHIO

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Downloaded January 2011

3701-17-02 Application of rules.

... (B) Nothing contained in rules 3701-17-01 to 3701-17-26 of the Administrative Code shall be construed as authorizing the supervision, regulation, or control of the spiritual care or treatment of residents in any nursing home who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination; provided, however, each nursing home shall otherwise comply with rules 3701-17-01 to 3701-17-26 of the Administrative Code, and each resident shall otherwise be provided with the services and care required by such rules.

3701-17-09 Activities; social services; chaplain services; visiting hours; telephone service; pets, mail.

...(E) All nursing homes shall provide residents with reasonable access to telephone services. The telephone shall be located in an area where calls can be made without being overheard and, if necessary, shall be adapted to accommodate disabilities.

...(G) The administrator shall ensure that:

(1) All mail, telegrams, or other communications addressed to residents is delivered to the addressee unopened and unread immediately upon receipt at the nursing home, and opened and read to the resident after delivery if the resident so requests.

(2) The resident's outgoing mail shall be delivered unopened and unread to the regular postal channels promptly upon its receipt from the resident except when there is no regularly scheduled postal delivery or pick-up service in which case it shall be placed into the next regularly scheduled delivery or pick-up. The nursing home shall assist a resident in writing a letter or have a letter written for him or her if the resident so requests.

3701-17-12 Notification and reporting of changes in health status, illness, injury and death of a resident.

The nursing home administrator or the administrator's designee shall:

(A) Immediately inform the resident, consult with resident's physician or the medical director, if the attending physician is not available, and notify the resident's sponsor or authorized representative, unless the resident objects, and other proper authority, in accordance with state and local laws and regulations when there is:

(1) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(2) A significant change in the resident's physical, mental, or psycho-social status such as a deterioration in health, mental, or psycho-social status in either life-threatening conditions or clinical complications;

(3) A need to alter treatment significantly such as a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment. The notification shall include a description of the circumstances and cause, if known, of the illness, injury or death. A notation of the change in health status and any intervention taken shall be documented in the medical record. If the resident is a patient of a hospice care program, the notifications required by this paragraph shall be the responsibility of the hospice care program unless otherwise indicated in the coordinated plan of care required under paragraph (G) of rule 3701-17-14 of the Administrative Code.

R.C. 119.032 review dates: 05/19/2006 and 05/01/2011 CERTIFIED  
ELECTRONICALLY \_\_\_\_\_ Certification 05/19/2006 \_\_\_ Date Promulgated Under:  
119.03 Statutory Authority: 3721.04 Rule Amplifies: 3721.01 to 3721.19 Prior Effective  
Dates: 3/1/1971, 12/21/92, 10/20/2001

## Ohio Resident Rights

§ 3721.12. Duties of home administrator concerning residents' rights; grievance procedure.

(A) The administrator of a home shall:

(1) With the advice of residents, their sponsors, or both, establish and review at least annually, written policies regarding the applicability and implementation of residents' rights under [sections 3721.10 to 3721.17](#) of the Revised Code, the responsibilities of residents regarding the rights, and the home's grievance procedure established under division (A)(2) of this section. The administrator is responsible for the development of, and adherence to, procedures implementing the policies.

(2) Establish a grievance committee for review of complaints by residents. The grievance committee shall be comprised of the home's staff and residents, sponsors, or outside representatives in a ratio of not more than one staff member to every two residents, sponsors, or outside representatives.

(3) Furnish to each resident and sponsor prior to or at the time of admission, and to each member of the home's staff, at least one of each of the following:

(a) A copy of the rights established under [sections 3721.10 to 3721.17](#) of the Revised Code;

(b) A written explanation of the provisions of [sections 3721.16 to 3721.162](#) [3721.16.2] of the Revised Code;

(c) A copy of the home's policies and procedures established under this section;

(d) A copy of the home's rules;

(e) A copy of the addresses and telephone numbers of the board of health of the health district of the county in which the home is located, the county department of job and family services of the county in which the home is located, the state departments of health and job

and family services, the state and local offices of the department of aging, and any Ohio nursing home ombudsperson program.

(B) Written acknowledgment of the receipt of copies of the materials listed in this section shall be made part of the resident's record and the staff member's personnel record.

(C) The administrator shall post all of the following prominently within the home:

(1) A copy of the rights of residents as listed in division (A) of [section 3721.13](#) of the Revised Code;

(2) A copy of the home's rules and its policies and procedures regarding the rights and responsibilities of residents;

(3) A notice that a copy of this chapter, rules of the department of health applicable to the home, and federal regulations adopted under the Medicare and Medicaid programs, and the materials required to be available in the home under [section 3721.021](#) [3721.02.1] of the Revised Code, are available for inspection in the home at reasonable hours;

(4) A list of residents' rights advocates;

(5) A notice that the following are available in a place readily accessible to residents:

(a) If the home is licensed under [section 3721.02](#) of the Revised Code, a copy of the most recent licensure inspection report prepared for the home under that section;

(b) If the home is a facility, a copy of the most recent statement of deficiencies issued to the home under [section 5111.42](#) of the Revised Code.

(D) The administrator of a home may, with the advice of residents, their sponsors, or both, establish written policies regarding the applicability and administration of any additional residents' rights beyond those set forth in [sections 3721.10](#) to [3721.17](#) of the Revised Code, and the responsibilities of residents regarding the rights. Policies established under this division shall be reviewed, and procedures developed and adhered to as in division (A)(1) of this section.

HISTORY: 137 v H 600 (Eff 4-9-79); 140 v H 660 (Eff 7-26-84); 141 v H 428 (Eff 12-23-86); 143 v H 822 (Eff 12-13-90); 145 v H 152 (Eff 7-1-93); 148 v H 471 (Eff 7-1-2000); 149 v H 94. Eff 9-5-2001.

§ 3721.13. Residents' rights; sponsor may protect rights.

(A) The rights of residents of a home shall include, but are not limited to, the following:

(1) The right to a safe and clean living environment pursuant to the Medicare and Medicaid programs and applicable state laws and regulations prescribed by the public health council;

(2) The right to be free from physical, verbal, mental, and emotional abuse and to be treated at all times with courtesy, respect, and full recognition of dignity and individuality;

(3) Upon admission and thereafter, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and

appropriate care consistent with the program for which the resident contracted. This care shall be provided without regard to considerations such as race, color, religion, national origin, age, or source of payment for care.

(4) The right to have all reasonable requests and inquiries responded to promptly;

(5) The right to have clothes and bed sheets changed as the need arises, to ensure the resident's comfort or sanitation;

(6) The right to obtain from the home, upon request, the name and any specialty of any physician or other person responsible for the resident's care or for the coordination of care;

(7) The right, upon request, to be assigned, within the capacity of the home to make the assignment, to the staff physician of the resident's choice, and the right, in accordance with the rules and written policies and procedures of the home, to select as the attending physician a physician who is not on the staff of the home. If the cost of a physician's services is to be met under a federally supported program, the physician shall meet the federal laws and regulations governing such services.

(8) The right to participate in decisions that affect the resident's life, including the right to communicate with the physician and employees of the home in planning the resident's treatment or care and to obtain from the attending physician complete and current information concerning medical condition, prognosis, and treatment plan, in terms the resident can reasonably be expected to understand; the right of access to all information in the resident's medical record; and the right to give or withhold informed consent for treatment after the consequences of that choice have been carefully explained. When the attending physician finds that it is not medically advisable to give the information to the resident, the information shall be made available to the resident's sponsor on the resident's behalf, if the sponsor has a legal interest or is authorized by the resident to receive the information. The home is not liable for a violation of this division if the violation is found to be the result of an act or omission on the part of a physician selected by the resident who is not otherwise affiliated with the home.

(9) The right to withhold payment for physician visitation if the physician did not visit the resident;

(10) The right to confidential treatment of personal and medical records, and the right to approve or refuse the release of these records to any individual outside the home, except in case of transfer to another home, hospital, or health care system, as required by law or rule, or as required by a third-party payment contract;

(11) The right to privacy during medical examination or treatment and in the care of personal or bodily needs;

(12) The right to refuse, without jeopardizing access to appropriate medical care, to serve as a medical research subject;

(13) The right to be free from physical or chemical restraints or prolonged isolation except to the minimum extent necessary to protect the resident from injury to self, others, or to property and except as authorized in writing by the attending physician for a specified and

limited period of time and documented in the resident's medical record. Prior to authorizing the use of a physical or chemical restraint on any resident, the attending physician shall make a personal examination of the resident and an individualized determination of the need to use the restraint on that resident. Physical or chemical restraints or isolation may be used in an emergency situation without authorization of the attending physician only to protect the resident from injury to self or others. Use of the physical or chemical restraints or isolation shall not be continued for more than twelve hours after the onset of the emergency without personal examination and authorization by the attending physician. The attending physician or a staff physician may authorize continued use of physical or chemical restraints for a period not to exceed thirty days, and at the end of this period and any subsequent period may extend the authorization for an additional period of not more than thirty days. The use of physical or chemical restraints shall not be continued without a personal examination of the resident and the written authorization of the attending physician stating the reasons for continuing the restraint. If physical or chemical restraints are used under this division, the home shall ensure that the restrained resident receives a proper diet. In no event shall physical or chemical restraints or isolation be used for punishment, incentive, or convenience.

(14) The right to the pharmacist of the resident's choice and the right to 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;

(15) The right to exercise all civil rights, unless the resident has been adjudicated incompetent pursuant to [Chapter 2111](#), of the Revised Code and has not been restored to legal capacity, as well as the right to the cooperation of the home's administrator in making arrangements for the exercise of the right to vote;

(16) The right of access to opportunities that enable the resident, at the resident's own expense or at the expense of a third-party payer, to achieve the resident's fullest potential, including educational, vocational, social, recreational, and habilitation programs;

(17) The right to consume a reasonable amount of alcoholic beverages at the resident's own expense, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;

(18) The right to use tobacco at the resident's own expense under the home's safety rules and under applicable laws and rules of the state, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;

(19) The right to retire and rise in accordance with the resident's reasonable requests, if the resident does not disturb others or the posted meal schedules and upon the home's request remains in a supervised area, unless not medically advisable as documented by the attending physician;

(20) The right to observe religious obligations and participate in religious activities; the right to maintain individual and cultural identity; and the right to meet with and participate in activities of social and community groups at the resident's or the group's initiative;

(21) The right upon reasonable request to private and unrestricted communications with the resident's family, social worker, and any other person, unless not medically advisable as documented in the resident's medical record by the attending physician, except that communications with public officials or with the resident's attorney or physician shall not be restricted. Private and unrestricted communications shall include, but are not limited to, the right to:

- (a) Receive, send, and mail sealed, unopened correspondence;
- (b) Reasonable access to a telephone for private communications;
- (c) Private visits at any reasonable hour.

(22) The right to assured privacy for visits by the spouse, or if both are residents of the same home, the right to share a room within the capacity of the home, unless not medically advisable as documented in the resident's medical record by the attending physician;

(23) The right upon reasonable request to have room doors closed and to have them not opened without knocking, except in the case of an emergency or unless not medically advisable as documented in the resident's medical record by the attending physician;

(24) The right to retain and use personal clothing and a reasonable amount of possessions, in a reasonably secure manner, unless to do so would infringe on the rights of other residents or would not be medically advisable as documented in the resident's medical record by the attending physician;

(25) The right to be fully informed, prior to or at the time of admission and during the resident's stay, in writing, of the basic rate charged by the home, of services available in the home, and of any additional charges related to such services, including charges for services not covered under the Medicare or Medicaid program. The basic rate shall not be changed unless thirty days notice is given to the resident or, if the resident is unable to understand this information, to the resident's sponsor.

(26) The right of the resident and person paying for the care to examine and receive a bill at least monthly for the resident's care from the home that itemizes charges not included in the basic rates;

(27) (a) The right to be free from financial exploitation;

(b) The right to manage the resident's own personal financial affairs, or, if the resident has delegated this responsibility in writing to the home, to receive upon written request at least a quarterly accounting statement of financial transactions made on the resident's behalf. The statement shall include:

(i) A complete record of all funds, personal property, or possessions of a resident from any source whatsoever, that have been deposited for safekeeping with the home for use by the resident or the resident's sponsor;

(ii) A listing of all deposits and withdrawals transacted, which shall be substantiated by receipts which shall be available for inspection and copying by the resident or sponsor.

(28) The right of the resident to be allowed unrestricted access to the resident's property on deposit at reasonable hours, unless requests for access to property on deposit are so persistent, continuous, and unreasonable that they constitute a nuisance;

(29) The right to receive reasonable notice before the resident's room or roommate is changed, including an explanation of the reason for either change.

(30) The right not to be transferred or discharged from the home unless the transfer is necessary because of one of the following:

(a) The welfare and needs of the resident cannot be met in the home.

(b) The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home.

(c) The safety of individuals in the home is endangered.

(d) The health of individuals in the home would otherwise be endangered.

(e) The resident has failed, after reasonable and appropriate notice, to pay or to have the Medicare or Medicaid program pay on the resident's behalf, for the care provided by the home. A resident shall not be considered to have failed to have the resident's care paid for if the resident has applied for Medicaid, unless both of the following are the case:

(i) The resident's application, or a substantially similar previous application, has been denied by the county department of job and family services.

(ii) If the resident appealed the denial pursuant to division (C) of [section 5101.35](#) of the Revised Code, the director of job and family services has upheld the denial.

(f) The home's license has been revoked; the home is being closed pursuant to section 3721.08, sections 5111.35 to 5111.62, or [section 5155.31](#) of the Revised Code, or the home otherwise ceases to operate.

(g) The resident is a recipient of Medicaid, and the home's participation in the Medicaid program is involuntarily terminated or denied.

(h) The resident is a beneficiary under the Medicare program, and the home's participation in the Medicare program is involuntarily terminated or denied.

(31) The right to voice grievances and recommend changes in policies and services to the home's staff, to employees of the department of health, or to other persons not associated with the operation of the home, of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to a residents' rights advocate, and the right to be a member of, to be active in, and to associate with persons who are active in organizations of relatives and friends of nursing home residents and other organizations engaged in assisting residents.

(32) The right to have any significant change in the resident's health status reported to the resident's sponsor. As soon as such a change is known to the home's staff, the home shall make a reasonable effort to notify the sponsor within twelve hours. (B) A sponsor may act

on a resident's behalf to assure that the home does not deny the residents' rights under [sections 3721.10](#) to [3721.17](#) of the Revised Code.

(C) Any attempted waiver of the rights listed in division (A) of this section is void.

HISTORY: 137 v H 600 (Eff 4-9-79); 143 v H 822 (Eff 12-13-90); 149 v H 94. Eff 9-5-2001.

§ 3721.14. Duties of home to implement rights; certain persons to have access to home

To assist in the implementation of the rights granted in division (A) of [section 3721.13](#) of the Revised Code, each home shall provide:

(A) Appropriate staff training to implement each resident's rights under division (A) of [section 3721.13](#) of the Revised Code, including, but not limited to, explaining:

(1) The resident's rights and the staff's responsibility in the implementation of the rights;

(2) The staff's obligation to provide all residents who have similar needs with comparable service.

(B) Arrangements for a resident's needed ancillary services;

(C) Protected areas outside the home for residents to enjoy outdoor activity, within the capacity of the facility, consistent with applicable laws and rules;

(D) Adequate indoor space, which need not be dedicated to that purpose, for families of residents to meet privately with families of other residents;

(E) Access to the following persons to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents:

(1) Employees of the department of health, department of mental health, department of mental retardation and developmental disabilities, department of aging, department of job and family services, and county departments of job and family services;

(2) Prospective residents and their sponsors;

(3) A resident's sponsors;

(4) Residents' rights advocates;

(5) A resident's attorney;

(6) A minister, priest, rabbi, or other person ministering to a resident's religious needs.

(F) In writing, a description of the home's grievance procedures.

HISTORY: 137 v H 600 (Eff 1-9-79); 140 v H 660 (Eff 7-26-84); 141 v H 428 (Eff 12-23-86); 143 v H 822 (Eff 12-13-90); 148 v H 471. Eff 7-1-2000.

§ 3721.15. Authorization to handle residents' financial affairs; accounts; return of funds.



(A) Authorization from a resident or a sponsor with a power of attorney for a home to manage the resident's financial affairs shall be in writing and shall be attested to by a witness who is not connected in any manner whatsoever with the home or its administrator. The home shall maintain accounts pursuant to division (A)(27) of [section 3721.13](#) of the Revised Code. Upon the resident's transfer, discharge, or death, the account shall be closed and a final accounting made. All remaining funds shall be returned to the resident or resident's sponsor, except in the case of death, when all remaining funds shall be transferred or used in accordance with [section 5111.112](#) [5111.11.2] of the Revised Code.

(B) A home that manages a resident's financial affairs shall deposit the resident's funds in excess of one hundred dollars, and may deposit the resident's funds that are one hundred dollars or less, in an interest-bearing account separate from any of the home's operating accounts. Interest earned on the resident's funds shall be credited to the resident's account. A resident's funds that are one hundred dollars or less and have not been deposited in an interest-bearing account may be deposited in a noninterest-bearing account or petty cash fund.

(C) Each resident whose financial affairs are managed by a home shall be promptly notified by the home when the total of the amount of funds in the resident's accounts and the petty cash fund plus other nonexempt resources reaches two hundred dollars less than the maximum amount permitted a recipient of Medicaid. The notice shall include an explanation of the potential effect on the resident's eligibility for Medicaid if the amount in the resident's accounts and the petty cash fund, plus the value of other nonexempt resources, exceeds the maximum assets a Medicaid recipient may retain.

(D) Each home that manages the financial affairs of residents shall purchase a surety bond or otherwise provide assurance satisfactory to the director of health, or, in the case of a home that participates in the

Medicaid program, to the director of job and family services, to assure the security of all residents' funds managed by the home.

HISTORY: 137 v H 600 (Eff 4-9-79); 143 v H 822 (Eff 12-13-90); 146 v H 117 (Eff 9-29-95); 146 v H 167 (Eff 11-15-95); 148 v H 471 (Eff 7-1-2000); 149 v H 94. Eff 9-5-2001.

§ 3721.17. Resident may file grievance; procedure upon complaint to department of health; retaliation prohibited; cause of action for violation.

(A) Any resident who believes that the resident's rights under [sections 3721.10 to 3721.17](#) of the Revised Code have been violated may file a grievance under procedures adopted pursuant to division (A)(2) of [section 3721.12](#) of the Revised Code. When the grievance committee determines a violation of [sections 3721.10 to 3721.17](#) of the Revised Code has occurred, it shall notify the administrator of the home. If the violation cannot be corrected within ten days, or if ten days have elapsed without correction of the violation, the grievance committee shall refer the matter to the department of health.

(B) Any person who believes that a resident's rights under [sections 3721.10 to 3721.17](#) of the Revised Code have been violated may report or cause reports to be made of the

information directly to the department of health. No person who files a report is liable for civil damages resulting from the report.

(C) (

1) Within thirty days of receiving a complaint under this section, the department of health shall investigate any complaint referred to it by a home's grievance committee and any complaint from any source that alleges that the home provided substantially less than adequate care or treatment, or substantially unsafe conditions, or, within seven days of receiving a complaint, refer it to the attorney general, if the attorney general agrees to investigate within thirty days.

(2) Within thirty days of receiving a complaint under this section, the department of health may investigate any alleged violation of [sections 3721.10 to 3721.17](#) of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, not covered by division (C)(1) of this section, or it may, within seven days of receiving a complaint, refer the complaint to the grievance committee at the home where the alleged violation occurred, or to the attorney general if the attorney general agrees to investigate within thirty days.

(D) If, after an investigation, the department of health finds probable cause to believe that a violation of [sections 3721.10 to 3721.17](#) of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, has occurred at a home that is certified under the Medicare or Medicaid program, it shall cite one or more findings or deficiencies under [sections 5111.35 to 5111.62](#) of the Revised Code. If the home is not so certified, the department shall hold an adjudicative hearing within thirty days under [Chapter 119](#). of the Revised Code.

(E) Upon a finding at an adjudicative hearing under division (D) of this section that a violation of [sections 3721.10 to 3721.17](#) of the Revised Code, or of rules, policies, or procedures adopted pursuant thereto, has occurred, the department of health shall make an order for compliance, set a reasonable time for compliance, and assess a fine pursuant to division (F) of this section. The fine shall be paid to the general revenue fund only if compliance with the order is not shown to have been made within the reasonable time set in the order. The department of health may issue an order prohibiting the continuation of any violation of [sections 3721.10 to 3721.17](#) of the Revised Code. Findings at the hearings conducted under this section may be appealed pursuant to [Chapter 119](#). of the Revised Code, except that an appeal may be made to the court of common pleas of the county in which the home is located. The department of health shall initiate proceedings in court to collect any fine assessed under this section that is unpaid thirty days after the violator's final appeal is exhausted.

(F) Any home found, pursuant to an adjudication hearing under division (D) of this section, to have violated [sections 3721.10 to 3721.17](#) of the Revised Code, or rules, policies, or procedures adopted pursuant to those sections may be fined not less than one hundred nor more than five hundred dollars for a first offense. For each subsequent offense, the home may be fined not less than two hundred nor more than one thousand dollars. A violation of [sections 3721.10 to 3721.17](#) of the Revised Code is a separate offense for each day of the violation and for each resident who claims the violation.

(G) No home or employee of a home shall retaliate against any person who:

(1) Exercises any right set forth in [sections 3721.10 to 3721.17](#) of the Revised Code, including, but not limited to, filing a complaint with the home's grievance committee or reporting an alleged violation to the department of health;

(2) Appears as a witness in any hearing conducted under this section or [section 3721.162](#) [3721.16.2] of the Revised Code;

(3) Files a civil action alleging a violation of [sections 3721.10 to 3721.17](#) of the Revised Code, or notifies a county prosecuting attorney or the attorney general of a possible violation of [sections 3721.10 to 3721.17](#) of the Revised Code. If, under the procedures outlined in this section, a home or its employee is found to have retaliated, the violator may be fined up to one thousand dollars.

(H) When legal action is indicated, any evidence of criminal activity found in an investigation under division (C) of this section shall be given to the prosecuting attorney in the county in which the home is located for investigation.

(I) (1) (a) Any resident whose rights under [sections 3721.10 to 3721.17](#) of the Revised Code are violated has a cause of action against any person or home committing the violation.

(b) An action under division (I)(1)(a) of this section may be commenced by the resident or by the resident's legal guardian or other legally authorized representative on behalf of the resident or the resident's estate. If the resident or the resident's legal guardian or other legally authorized representative is unable to commence an action under that division on behalf of the resident, the following persons in the following order of priority have the right to and may commence an action under that division on behalf of the resident or the resident's estate:

(i) The resident's spouse;

(ii) The resident's parent or adult child;

(iii) The resident's guardian if the resident is a minor child;

(iv) The resident's brother or sister;

(v) The resident's niece, nephew, aunt, or uncle.

(c) Notwithstanding any law as to priority of persons entitled to commence an action, if more than one eligible person within the same level of priority seeks to commence an action on behalf of a resident or the resident's estate, the court shall determine, in the best interest of the resident or the resident's estate, the individual to commence the action. A court's determination under this division as to the person to commence an action on behalf of a resident or the resident's estate shall bar another person from commencing the action on behalf of the resident or the resident's estate.

(d) The result of an action commenced pursuant to division (I)(1)(a) of this section by a person authorized under division (I)(1)(b) of this section shall bind the resident or the resident's estate that is the subject of the action.

(e) A cause of action under division (I)(1)(a) of this section shall accrue, and the statute of limitations applicable to that cause of action shall begin to run, based upon the violation of a

resident's rights under [sections 3721.10](#) to [3721.17](#) of the Revised Code, regardless of the party commencing the action on behalf of the resident or the resident's estate as authorized under divisions (I)(1)(b) and (c) of this section.

(2) (a) The plaintiff in an action filed under division (I)(1) of this section may obtain injunctive relief against the violation of the resident's rights. The plaintiff also may recover compensatory damages based upon a showing, by a preponderance of the evidence, that the violation of the resident's rights resulted from a negligent act or omission of the person or home and that the violation was the proximate cause of the resident's injury, death, or loss to person or property.

(b) If compensatory damages are awarded for a violation of the resident's rights, [section 2315.21](#) of the Revised Code shall apply to an award of punitive or exemplary damages for the violation.

(c) The court, in a case in which only injunctive relief is granted, may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed.

(3) Division (I)(2)(b) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action in which this section is relevant, whether the action is pending in court or commenced on or after July 9, 1998.

(4) Within thirty days after the filing of a complaint in an action for damages brought against a home under division (I)(1)(a) of this section by or on behalf of a resident or former resident of the home, the plaintiff or plaintiff's counsel shall send written notice of the filing of the complaint to the department of job and family services if the department has a right of recovery under [section 5101.58](#) of the Revised Code against the liability of the home for the cost of medical services and care arising out of injury, disease, or disability of the resident or former resident.

HISTORY: 137 v H 600 (Eff 4-9-79); 140 v H 660 (Eff 7-26-84); 143 v H 822 (Eff 12-13-90); 147 v H 354 (Eff 7-9-98); 149 v H 94 (Eff 9-5-2001); 149 v H 412. Eff 11-7-2002.

§ 3721.18. Attorney general may investigate violations; referral to prosecuting attorney.

The attorney general may investigate alleged violations of [Chapter 3721](#). of the Revised Code or rules, policies, or procedures adopted thereunder. When it appears, as the result of the investigation, that there is cause to prosecute for the commission of a crime, the attorney general shall refer the evidence to the prosecuting attorney having jurisdiction in the matter.

HISTORY: 137 v H 600. Eff 4-9-79.

§ 3721.19. Notice of home's nonparticipation in state assistance program; action for violation.

(A) As used in this section:

(1) "Home" and "residential care facility" have the same meanings as in [section 3721.01](#) of the Revised Code;

(2) "Sponsor" and "residents' rights advocate" have the same meanings as in [section 3721.10](#) of the Revised Code.

A home licensed under this chapter that is not a party to a provider agreement, as defined in [section 5111.20](#) of the Revised Code, shall provide each prospective resident, before admission, with the following information, orally and in a separate written notice on which is printed in a conspicuous manner: "This home is not a participant in the medical assistance program administered by the Ohio department of job and family services. Consequently, you may be discharged from this home if you are unable to pay for the services provided by this home." If the prospective resident has a sponsor whose identity is made known to the home, the home shall also inform the sponsor, before admission of the resident, of the home's status relative to the medical assistance program. Written acknowledgement of the receipt of the information shall be provided by the resident and, if the prospective resident has a sponsor who has been identified to the home, by the sponsor. The written acknowledgement shall be made part of the resident's record by the home. No home shall terminate its status as a provider under the medical assistance program unless it has, at least ninety days prior to such termination, provided written notice to the department of job and family services and residents of the home and their sponsors of such action. This requirement shall not apply in cases where the department of job and family services terminates a home's provider agreement or provider status.

(B) A home licensed under this chapter as a residential care facility shall provide notice to each prospective resident or the individual's sponsor of the services offered by the facility and the types of skilled nursing care that the facility may provide. A residential care facility that, pursuant to [section 3721.012](#) [3721.01.2] of the Revised Code, has a policy of entering into risk agreements with residents or their sponsors shall provide each prospective resident or the individual's sponsor a written explanation of the policy and the provisions that may be contained in a risk agreement. At the time the information is provided, the facility shall obtain a statement signed by the individual receiving the information acknowledging that the individual received the information. The facility shall maintain on file the individual's signed statement.

(C) A resident has a cause of action against a home for breach of any duty imposed by this section. The action may be commenced by the resident, or on the resident's behalf by the resident's sponsor or a residents' rights advocate, by the filing of a civil action in the court of common pleas of the county in which the home is located, or in the court of common pleas of Franklin county. If the court finds that a breach of any duty imposed by this section has occurred, the court shall enjoin the home from discharging the resident from the home until arrangements satisfactory to the court are made for the orderly transfer of the resident to another mode of health care including, but not limited to, another home, and may award the resident and a person or public agency that brings an action on behalf of a resident reasonable attorney's fees. If a home discharges a resident to whom or to whose sponsor information concerning its status relative to the medical assistance program was not provided as required under this section, the court shall grant any appropriate relief including, but not limited to, actual damages, reasonable attorney's fees, and costs.

HISTORY: 138 v H 176 (Eff 7-1-80); 141 v H 428 (Eff 12-23-86); 146 v H 117 (Eff 9-29-95);  
148 v H 471. Eff 7-1-2000.  
§ 3721.20. Repealed.

Repealed, 138 v H 204, § 270 [137 v H 276; 138 v H 204]. Eff 9-1-79