

VERMONT

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3. RESIDENTS' RIGHTS

3.1 Nursing Facility Policies and Procedures

(a) The governing body of the facility shall establish written policies and procedures regarding the rights and responsibilities of residents.

(b) Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing such policies.

(c) The facility's policies and procedures shall be made available upon request to:

- (1) residents or potential residents;
- (2) their guardians;
- (3) their next of kin;
- (4) representative payees; and
- (5) reciprocal beneficiary.

3.2 Duties of Staff

It is the duty of all members of the nursing facility staff to ensure that every resident under their care is accorded all rights set out in Sections 3 and 4.

3.3 Rights of Resident Representatives

(a) The rights and obligations established under these rules shall devolve to a resident's court-appointed guardian, next of kin, reciprocal beneficiary or health care agent pursuant to a durable power of attorney for health care if the resident:

- (1) has been adjudicated incompetent;
- (2) lacks capacity to understand or exercise a right granted under this section, as certified in writing by the resident's attending physician and another individual, who shall be a physician or a qualified mental health professional as defined by 14 V.S.A. §3061(10). Certification of the resident's lack of capacity shall be filed in the resident's medical record at the facility; or
- (3) exhibits a non-remedial communication barrier.

(b) If the resident's wishes are not known, the guardian, next of kin, reciprocal beneficiary or health care agent shall make decisions in accordance with the resident's best interests and in accordance with accepted medical practices.

(c) Notwithstanding the provisions of (a) and (b) of this subsection and irrespective of the resident's capacity to understand or exercise his or her rights, a right may not be exercised or waived by next of kin or by a health care agent over the resident's objections. The facility

shall make every reasonable effort to communicate the rights and obligations established under this chapter directly to the resident.

(d) If the rights of a resident have devolved to another individual, the facility shall keep a copy of the relevant court order or other documents which provide evidence of legal authority in the resident's file.

(e) If the eligible group of kin consists of more than one person, the agreement of the majority of the members of the group is required for a decision to be made on behalf of the resident. If there is no agreement by a majority of the members of the group, the group and all kin having lower priority are disqualified from making the decision.

(f) In the event that a resident objects to a decision made on his or her behalf by the next of kin or by the resident's health care agent, the facility shall immediately notify the long term care ombudsman.

3.4 Confidentiality and Access to Records

(a) Each resident shall be assured confidential treatment of his or her personal and medical records, and may approve or refuse their release to any individual outside the facility, except in the case of his or her transfer to another health care institution, or as required by law or third-party payment contract.

(b) Upon an oral or written request, each resident shall be given access to all records pertaining to himself or herself, including current clinical records within 24 hours (excluding weekends and holidays).

(c) After receipt of his or her records for inspection, a resident may purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them, upon request and 2 working days advance notice to the facility.

(d) Residents and their families, including a reciprocal beneficiary, shall have the right to review current and past state and federal survey and inspection reports of the facility, and upon request, to receive from the facility a copy of any report. Copies of reports shall be available for review at any time at one station in the facility. The facility may charge an amount not to exceed the community standard for more than one copy per resident.

3.5 Information Rights

(a) Each resident shall be fully informed, as evidenced by the resident's written acknowledgement, prior to or at the time of admission and as well as during the stay of the rights set out in this section and of all rules and regulations governing resident conduct and responsibilities.

(b) The staff shall make reasonable accommodation to communicate the resident's bill of rights to residents with communication impairments and residents who speak a language other than English.

(c) Each resident shall be fully informed by a physician of his or her medical condition.

(d) A summary of the obligations of the facility to residents shall be written in clear language, in easily readable print, and posted conspicuously in a public place on each floor. Such notice also shall summarize the facility's grievance procedure and give directions for contacting the ombudsman program.

3.6 Treatment and Experimental Research

(a) Each resident shall be afforded the opportunity to participate in the planning of his or her medical treatment.

(b) To the extent permitted by law, the resident has the right to refuse care or treatment, including the right to refuse restraint and to discharge himself or herself from the facility, and to be informed of the consequences of that action. The nursing home shall be relieved of any further responsibility for that refusal.

(c) Any resident may refuse to participate in experimental research.

3.7 Written Information

(a) The facility must furnish a written description of the residents' legal rights which includes:

(1) a description of the manner of protection of personal funds under subsections 3.10(a), 3.10(b)(1), and 3.10(b)(2) of these rules.

(2) a posting of the names, addresses, and telephone numbers of all pertinent State client advocacy groups, such as the licensing agency, the ombudsman, protection and advocacy organizations and the Medicaid Provider Fraud Unit of the Office of the Attorney General.

3.8 Advance Directives

(a) The right to formulate an advance directive applies to each individual resident without restriction.

(b) The facility must maintain written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies implementing advance directives.

(c) A facility must have the capacity to administer cardiopulmonary resuscitation (CPR) to any resident when necessary and in accordance with the resident's advance directives.

3.9 Right to Choose Personal Physician

The resident shall have the right to choose his or her own personal physicians, and the right to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exist, or when the resident requests information concerning care or treatment alternatives, the resident shall receive such information from his or her doctor or the administrator, as appropriate.

3.10 Management of Resident's Personal Funds

(a) Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for personal funds of the resident deposited with the facility, as specified in subsections 3.10(b) through 3.10(f) of this section.

(b) Deposit of funds:

(1) Funds in excess of \$50. The facility must deposit any resident's 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 a resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(2) Funds less than \$50. The facility must maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(c) Accounting and records:

(1) The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(2) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than the resident.

(3) The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.

(d) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits:

(1) When the amount in the resident's account reaches \$200 or less than the SSI resource limit for one person; and

(2) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(e) Conveyance upon death or discharge. Upon the death or discharge of a resident with personal funds deposited with the facility, the facility must convey, within 30 days, the residents funds, and a final accounting of those funds, to the discharged resident, or the individual or probate jurisdiction administering the resident's estate.

(f) Assurance of financial security.

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the licensing agency, to assure the security of all personal funds of residents deposited with the facility.

3.11 Resident Work

Residents are not required to perform services for the facility that are not included for therapeutic purposes in his or her plan of care.

3.13 Self-Administration of Drugs

An individual resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

3.15 Equal Access to Quality Care

(a) A facility must establish and maintain identical policies and practices regarding admission, transfer, discharge, and the provision of services under the State Medicaid Plan for all individuals regardless of source of payment.

(b) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in paragraph 3.16(c) of this section describing the charges.

3.17 Freedom from Restraints and Abuse

(a) General. Each resident shall be free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or herself or to others, or when exercising a right to refuse treatment under section 3.6.

(b) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(1) The facility shall inform residents of its restraint policy and appeal rights under the facility's grievance procedure.

(2) The policy must include the release of the restraints at intervals of every two hours or less, for ten minutes for exercise and repositioning.

(c) Abuse. A resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(d) Staff treatment of residents.

(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(2) The facility must not use verbal, mental, sexual or physical abuse, corporal punishment, or involuntary seclusion.

(3) A nursing facility shall not employ individuals who have been:

(i) found guilty of abusing, neglecting, exploiting or mistreating residents by a court of law;
or

(ii) have had a finding entered into the Vermont State Nurse Assistants Registry or the Vermont Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

(e) A nursing facility shall report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the Vermont State Nurse Assistants Registry or the appropriate licensing authority and the licensing agency. Actions by a court of law which indicate unfitness for service include a charge of abuse, neglect or exploitation substantiated against an employee or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction within or outside the State of Vermont.

(f) The facility must ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and the licensing agency and Adult Protective Services in accordance with 33 V.S.A. Chapter 69.

(g) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(h) The results of all investigations must be reported to the administrator or his or her designated representative and to the licensing agency in accordance with 33 V.S.A. Chapter 69, and if the alleged violation is verified, appropriate corrective action must be taken.