

WEST VIRGINIA

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64-13-4. Residents' Rights.

4.1. Nursing Home Policies and Procedures.

4.1.a. The governing body of a nursing home shall establish written policies and procedures regarding the rights and responsibilities of residents. The policies adopted shall be consistent with the provisions of this rule.

4.1.b. Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing policies regarding the rights and responsibilities of residents.

4.1.c. A nursing home shall make its policies and procedures available upon request to:

4.1.c.1. Residents or potential residents; and

4.1.c.2. Legal representatives.

4.2. Duties of Staff.

4.2.a. All members of the nursing home staff shall ensure that every resident under their care is accorded all rights set forth in Sections 4 and 5 of this rule.

4.2.b. The nursing home staff shall at least annually receive training from or approved by the Department in the proper implementation of residents' rights policies under Paragraph 11.5.c.4 of this rule.

4.2.c. When the nursing home staff limits or restricts the rights of a resident for medical reasons, the staff will document the specific reasons for the limitation or restriction in the resident's medical record, and the specific period of time the limitation or restriction will be in place. The resident or the resident's legal representative shall authorize the limitation or restriction in writing.

4.3. Rights of Legal Representatives.

4.3.a. The rights and obligations established under this rule devolve to a resident's legal representative if, in accordance with applicable State law, the resident lacks capacity to exercise his or her rights and obligations.

4.3.a.1. If a legal representative has been appointed for, or designated by, any resident as having the authority to exercise on behalf of the resident one or more of the resident's

rights under this rule, the nursing home shall afford the legal representative the full opportunity to exercise that authority.

4.3.a.2. A legal representative shall exercise his or her authority in conformance with State and federal law.

4.3.a.3. Nothing in this rule shall in any way be construed to diminish or deprive any person of any rights other than specifically provided in this rule.

4.3.b. If a resident is unable to make medical decisions:

4.3.1.b. In the case of a resident adjudged incompetent by the court, the nursing home shall notify the resident's legal representative to act on the resident's behalf.

4.3.b.2. In the case of a resident who has not been adjudged incompetent by the court, the nursing home may notify the resident's legal representative to act on the resident's behalf.

4.3.c. The nursing home shall make every reasonable effort to communicate the rights and obligations established under this rule directly to the resident.

4.3.d. If the rights of a resident have devolved to another person, the nursing home shall maintain documentation of the determination of incapacity or incompetence, in the residents medical record.

4.3.e. The nursing home shall maintain in the residents' medical record verification of the authority of the legal representative.

4.3.f. If the resident regains his or her capacity, the powers of the legal representative shall cease immediately.

4.4. Confidentiality and Access to Records and Information.

4.4.a. Confidential Treatment. The nursing home shall assure confidential treatment of each resident's personal and medical records and may approve or refuse their release to any person outside the nursing home, except in the case of his or her transfer to another health care institution, as required by law, or for a third party payment contract.

4.4.b. Access to Records. Upon an oral or written request, the nursing home shall provide to each resident access to all of his or her records, including current clinical records, within twenty-four (24) hours of the request.

4.4.b.1. Records may only be available during normal business operating hours, excluding weekends and holidays.

4.4.c. A resident may purchase, at a cost to exceed twenty-five cents (\$0.25) per page, photocopies of the records or any portions of them, upon oral or written request to the nursing home.

4.4.c.1. The nursing home will provide the photocopied materials to the resident within two (2) working days of the request.

4.4.d. Access to Survey and Inspection Reports. Any person shall have the right to review the most recent and past state and federal inspection and compliant reports with the nursing home's plan of correction.

4.4.d.1. A nursing home shall make the results of surveys and inspections, as well as plans of correction, available for examination in a place readily accessible to residents and shall post a notice of their availability.

4.4.d.2. A nursing home may charge an amount not to exceed twenty-five cents (\$0.25) per page for copies of reports requested by any person.

4.4.e. A nursing home shall adopt policies and procedures that will protect the confidentiality of the resident as it relates to use of the resident's name and photographs.

4.5. Right for information. A nursing home shall:

4.5.a. Inform a resident of his or her rights and responsibilities under this rule and all rules governing resident conduct, prior to or at the time of admission and within thirty (30) days of any changes to the rules regarding residents' rights, and the resident shall acknowledge receipt of this information in writing.

4.5.b. Prominently display a copy of the residents' rights and responsibilities, the names, addresses and telephone numbers of all associated State agencies including licensing agencies, and State and local ombudsmen programs.

4.5.c. Reasonably accommodate residents with special communication needs such as hearing impairments and a primary language other than English to inform residents of their rights.

4.5.d. Inform a resident about:

4.5.d.1. The resident's medical condition, or if a resident is declared incapacitated in which case the legal representative shall be informed;

4.5.d.2. The resident's care and treatment, or if a resident is declared incapacitated, the legal representative shall be informed.

4.5.e. Inform a resident of the right to voice all grievances without discrimination or reprisal and promptly resolve a resident's grievances.

4.5.f. Self Administration of Drugs. A resident may self-administer drugs if the interdisciplinary team determines that self administration is safe. The interdisciplinary team shall review the self drug administration determination at least quarterly.

4.6. Refusal of Treatment and Experimental Research.

4.6.a. Refusal of Treatment. A resident has the right to refuse treatment and to refuse to participate in experimental research.

4.6.a.1. As provided under State law, a resident who has the capacity to make a health care decision and who either withholds consent to treatment or makes an explicit refusal of treatment, either directly or through an advance directive, shall not be treated against his or her wishes.

4.6.a.1.A. If the resident is unable to make a health care decision, a decision by the resident's legal representative to forego treatment is, subject to state law, equally binding on the nursing home.

4.6.a.1.B. When a refusal of treatment occurs, the nursing home shall assess the reasons for the resident's refusal, clarify and educate the resident, and in the case of incapacity, the legal representative, as to the consequences of the refusal, and offer alternative treatments, and continue to provide all other services.

4.6.a.1.C. The nursing home shall maintain documentation in the resident's medical record of the resident's refusal and the actions taken.

4.6.a.2. Refusal of Experimental Research. The resident shall have the opportunity to refuse to participate in experimental research prior to the start of the research.

4.6.a.2.A. The nursing home shall inform a resident being considered for participation in experimental research of the nature of the experiment and of the possible consequences for participation.

4.6.b. A nursing home shall not transfer or discharge a resident for refusing treatment unless criteria for transfer or discharge are met under Subsection 4.13 of this rule.

4.7. Written Information. A nursing home shall provide to residents a written description of a resident's legal rights which includes:

4.7.a. A description of the manner of protecting personal funds, under Subdivision 4.10.g. of this rule;

4.7.b. A description of the resident's financial obligation as explained to the residents prior to or at the time of admission, including residents' charges for services available, charges not covered under the Medicaid Program, or charges not included in the nursing home's basic rate;

4.7.c. A description of the requirements and procedures for Medicaid eligibility including information about the availability of asset assessments upon request at the county Department office;

4.7.d. A list of names, addresses, and telephone numbers of the director, the Medicaid fraud control unit, and all related state client advocacy groups such as the ombudsmen program and the protection and advocacy network; and

4.7.e. A statement that the resident may file a complaint with the director concerning resident abuse, neglect, and misappropriation of resident property in the nursing home.

4.8. Advance Directives.

4.8.a. The resident has the right to execute an advance directive.

4.8.b. A nursing home shall maintain written policies and procedures regarding advance directives including:

4.8.b.1. 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 resident's option, execute an advance directive; and

4.8.b.2. A written description of the nursing home's policies implementing advance directives.

4.8.c. A nursing home shall only admit residents for which it has the capacity to administer care in accordance with the resident's advance directives, but can not require a resident to execute an advance directive as a condition of admission.

4.8.c.1. The nursing home shall notify the resident or legal representative of its inability to honor a resident's advance directive executed after admission to the nursing home and assist in finding appropriate alternative placement if he or she desires.

4.9. Right to Choose a Personal Physician.

4.9.a. The resident has the right to choose a personal physician, and 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.

4.9.a.1. The resident shall receive the information from his or her doctor or the administrator or his or her designee, as appropriate.

4.9.b. Upon admission, the nursing home shall provide the resident with the names of physicians who have attending privileges at the nursing home.

4.9.c. The nursing home shall provide written notice to the resident of the name, address, telephone number and specialty of his or her attending physician at the time of admission and when any change in physician is made.

4.10. Management of Residents' Personal Funds.

4.10.a. The resident has the right to manage his or her own financial affairs, and the nursing home shall not require residents to deposit their personal funds with the nursing home.

4.10.b. Upon written authorization of a resident, the nursing home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the nursing home as specified in Subdivisions 4.10.c. through 4.10.f. of this Section.

4.10.c. Deposit of funds.

4.10.c.1. Funds in excess of fifty dollars (\$50).

4.10.c.1.A. A nursing home shall deposit any resident's personal funds in excess of fifty dollars (\$50) in an interest-bearing account (or accounts) that is separate from any of the nursing home's operating accounts and that credits all interest earned on a resident's funds to that account.

4.10.c.1.B. In pooled accounts, there shall be a separate accounting for each resident's share.

4.10.c.2. Funds less than fifty dollars (\$50):

4.10.c.2.A. A nursing home shall maintain a resident's personal funds that do not exceed fifty dollars (\$50) in a non-interest bearing account, interest-bearing account, or petty cash fund.

4.10.d. Accounting and records:

4.10.d.1. A nursing home shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home.

4.10.d.2. The system shall preclude any co-mingling of a resident's funds with nursing home funds or with the funds of any person other than another resident.

4.10.d.3. The individual financial record shall be available through quarterly statements and on request to the resident or his or her legal representative.

4.10.d.3.A. For any transaction from a resident's account, the nursing home shall provide the resident with a receipt and retain a copy of the receipt.

4.10.d.3.B. The nursing home shall administer the funds on behalf of the resident in the manner directed by the resident or in the case of incapacity, the legal representative.

4.10.e. Notice of certain balances.

4.10.e.1. A nursing home shall notify each resident who receives Medicaid benefits:

4.10.e.1.A. When the amount in the resident's account reaches two hundred dollars (\$200) less than the Supplemental Security Income (SSI) resource limit for one person; and

4.10.e.1.B. The amount in the account, in addition to the value of the resident's other non-exempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

4.10.f. Conveyance upon death or discharge.

4.10.f.1. Upon the death or discharge of a resident with personal funds deposited with the nursing home, the nursing home shall convey, within thirty (30) days, the resident's funds, and a final accounting of those funds, to the discharged resident, or to the person or probate jurisdiction administering the resident's estate.

4.10.g. Assurance of financial security.

4.10.g.1. A nursing home shall purchase a bond or obtain and maintain commercial insurance with a company licensed in the State of West Virginia if the nursing home in

any one month handles an amount greater than thirty-five dollars (\$35) per resident per month in the aggregate.

4.10.g.1.A. The sum of the bond or insurance shall be at least one and twenty-five one-hundredths (1.25) times the average amount of residents' funds deposited with the nursing home during the nursing home's previous fiscal year. Reference Table 64-13B of this rule.

4.10.g.1.B. The insurance policy shall specifically designate the resident as the primary beneficiary or payee for reimbursement of lost funds.

4.10.g.1.C. A nursing home shall reimburse the resident, within thirty (30) days, for any losses and seek its reimbursement through the bond or insurance.

4.10.g.1.D. A nursing home is responsible for any insurance deductible.

4.10.g.1.E. The director may require a nursing home to file an additional bond or purchase additional insurance in the following circumstances:

4.10.g.1.E.1. When the director determines that the amount of the bond or insurance is insufficient to protect the residents' money; or

4.10.g.1.E.2. When the amount of the bond or insurance is impaired by recovery against it.

4.10.g.1.F. When a nursing home ceases to handle residents' funds in amounts that require a bond or insurance, the director shall allow the release of the bond or insurance upon the nursing home providing an accounting to the residents.

4.10.g.1.G. When a nursing home determines, on the basis of medical judgment, that a resident is unable to manage his or her financial affairs and does not have a legal financial representative, the nursing home shall notify the resident's next of kin to initiate guardianship, conservatorship or incompetency proceedings.

4.10.g.1.H. A nursing home may initiate guardianship, conservatorship or incompetency proceedings on behalf of the resident if the resident has no next of kin or if the next of kin, once notified, fails to act.

4.10.g.1.I. An employee of a nursing home, or a person or his or her spouse having a financial interest in the nursing home, shall not serve as a resident's legal representative unless the employee or person is related to the resident within the degree of consanguinity of second cousin or unless the nursing home has been named temporary legal representative payee.

4.11. Resident Work.

4.11.a. A resident has the right to refuse to perform services for the nursing home, and a resident has the right to perform services for the nursing home if he or she chooses when:

4.11.a.1. The nursing home has documented the need or desire for work in the resident plan of care;

4.11.a.2. The resident plan of care specifies the nature of the services to be performed and whether the services are voluntary or paid;

4.11.a.3. Compensation for paid services is at or above prevailing rates for the services; and

4.11.a.4. The resident agrees to the work arrangement described in the resident plan of care.

4.14. Equal Access to Quality Care.

4.14.a. Each resident or person requesting admission to a nursing home shall be free from discrimination by the nursing home, unless the discrimination:

4.14.a.1. Is the result of the nursing home not being able to provide adequate and appropriate care, and treatment and services to the resident or applicant due to the resident's or applicant's history of mental or physical disease or disability; and

4.14.a.2. Is not contrary to a federal or State law, regulation or rule:

4.14.a.2.A. That prohibits the discrimination; or

4.14.a.2.B. That requires the care to be provided if the nursing home participates in a financial program requiring the admittance or continued residence of the person.

4.14.b. For all persons, regardless of source of payment, a nursing home shall establish and maintain a set of policies and procedures regarding admission, transfer, discharge and the provision of services.

4.14.c. Civil Rights.

4.14.c.1. A nursing home shall not segregate a resident, give separate treatment, restrict the enjoyment of any advantage or privilege enjoyed by others in the nursing home, or provide any aid, care services, or other benefits that are different from or are provided in a different manner from those provided to others in the nursing home on the grounds of race, color, religion, or national origin, age, disability, sex or other protected status.

4.14.c.2. A nursing home shall not deny admission to a prospective resident on the grounds of race, religion or national origin, age, disability, sex or other protected status.

4.15. Admissions and Payment Policy.

4.15.a. A nursing home shall not require:

4.15.a.1. Residents or potential residents to waive their rights to Medicare or Medicaid; and

4.15.a.2. Oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits. 4.15.b. Third Party Guarantee. A nursing home shall not require a third party guarantee of payment to the nursing home as a condition of admission or expedited admission, or continued stay in the nursing home.

4.15.b.1. A nursing home, however, may require for admission or for continued stay of a resident, that a person who has legal right and access to a resident's income or resources available to pay for care to sign a contract, without incurring personal financial liability, to provide payment from the resident's income or resources.

4.15.c. A nursing home shall fully inform each resident prior to or at the time of admission and during his or her stay, of services available in the nursing home and of related charges,

including any charge for services not covered under Medicare or Medicaid, or not covered by the nursing home's basic per diem rate, including the nursing home's policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items.

4.15.c.1. A nursing home may charge any amount for services furnished to non-Medicaid residents consistent with this paragraph.

4.15.c.2. Medicaid residents and their legal representatives shall be informed that if they desire a private room, they may privately supplement the Medicaid payment by directly paying the facility the difference between the semi-private room rate and the private room rate.

4.15.d. A nursing home shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits and allowable uses of the resident's income for items and services not covered by Medicaid and Medicare.

4.15.e. In the case of a person eligible for Medicaid, a Medicaid/Medicare approved nursing home shall not charge, solicit or accept, or receive, in addition to any amount otherwise required to be paid under the State Medicaid Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the nursing home.

4.15.e.1. A nursing home may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term "nursing home services" if the nursing home gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for or receipt of such additional services.

4.15.e.2. A nursing home may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the nursing home for a Medicaid eligible resident.

4.15.f. A nursing home shall give the resident a thirty (30) day notice when changes are made to items and services specified in Subdivisions 4.16.c. and 4.16.d. of this Subsection.

4.16. Freedom from Restraints and Abuse.

4.16.a. General. Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances.

4.16.a.1. The restraint is necessary to protect the resident from injury to himself or others;
or

4.16.a.2. The restraint is used as a therapeutic intervention or enabler for specific periods of time to attain and maintain the resident's highest practicable physical, mental or psychosocial well-being.

4.16.b. Restraints.

4.16.b.1. Assessments.

4.16.b.1.A. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes:

4.16.b.1.A.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity, the resident's legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs;

4.16.b.1.A.2. Identifying the causal factors;

4.16.b.1.A.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; and

4.16.b.1.A.4. The following, if alternatives to restraints are not found to be practicable:

4.16.b.1.A.4.(a). A full explanation to the resident, and in the case of incapacity, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity, the resident's legal representative;

4.16.b.1.A.4.(b). Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and

4.16.b.1.A.4.(c). An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.b.2. Physician's order.

4.16.b.2.A. After a comprehensive restraint assessment indicates the need for a restraint and the resident's attending physician concurs, the resident's attending physician shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances and duration of the restraint.

4.16.b.3. The resident's plan of care shall include, at a minimum:

4.16.b.3.A. The type and size of restraint that is to be used;

4.16.b.3.B. When the restraint is to be used;

4.16.b.3.C. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and

4.16.b.3.D. A systematic and gradual process to reduce the restraint or eliminate it, or both.

4.16.b.4. Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.b.5. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour and shall be released from the restraint at least every two (2) hours and provided exercise, toileting, and skin care.

4.16.b.6. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.b.7. Emergency.

4.16.b.7.A. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited period of time not to exceed twenty-four (24) hours until the resident's attending physician can be notified of the resident's condition requiring the emergency application.

4.16.b.7.B. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident's attending physician.

4.16.c. Abuse.

4.16.c.1. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment and involuntary seclusion.

4.16.c.2. Staff treatment of residents.

4.16.c.2.A. The nursing home shall develop and implement written policies and procedures that prohibit neglect, abuse of residents, and misappropriation of resident property.

4.16.c.3. A nursing home shall not employ persons who have:

4.16.c.3.A. Been found guilty of abusing, neglecting, exploiting or mistreating residents, incapacitated adults or children by a court of law; or

4.16.c.3.B. Had a finding entered into the Certified Nursing Assistant Registry or the West Virginia Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

4.16.c.4. A nursing home shall report any knowledge it has of actions by a court of law against an employee, that would indicate unfitness for service as a nurse aide or other nursing home staff to the West Virginia Certified Nursing Assistant Registry or the appropriate licensing authority and the director.

4.16.c.4.A. Actions by a court of law which indicate unfitness for service include a substantiated charge of abuse, neglect or exploitation against an employee, or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes related to public welfare, in any jurisdiction within or outside of the State of West Virginia.

4.16.c.5. A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation or abuse, including injuries of unknown source, and misappropriation of resident property are reported in accordance with State law.

4.16.c.6. A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress.

4.16.c.7. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with State law, including the director within five (5) working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.

4.17. Compliant Procedures.

4.17.a. A nursing home shall develop and implement written procedures for registering and responding to complaints by residents, their legal representative and the public.

4.17.b. A nursing home shall designate an employee to be responsible for receiving complaints.

4.17.c. A nursing home shall establish a method to inform the administrator of all complaints.

4.17.d. A nursing home shall establish a process for investigation and assessment of the validity of all complaints.

4.17.e. A nursing home shall provide a mechanism to record all complaints received and any action taken on them and to communicate the findings or outcomes to the resident, or the resident's legal representative, making the complaint.

4.17.f. A nursing home shall assure that careful consideration is given to each complaint even when it has been made by a person who often makes complaints having no valid basis.

4.17.g. A nursing home shall establish a program to assure that its personnel are familiar with complaint policies and procedures.

4.17.h. A nursing home shall establish a program to educate residents and their legal representatives about the nursing home's compliant policies and procedures.'