

## State Regulations Pertaining to Resident Rights

Note: This document is arranged alphabetically by State. To move easily from State to State, click the "Bookmark" tab on the Acrobat navigation column to the left of the PDF document. This will open a Table of Contents for the document. The relevant federal regulations are at the end of the PDF.

### Alabama

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420-5-10-.05 Resident Rights.

(1) Resident 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 each of the following rights.

(2) Exercise of rights.

(a) 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.

(b) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(c) In the case of a resident adjudged incompetent under the laws of a 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.

(d) In the case of a resident who has not been judged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's right to the extent provided by State law.

(3) Notice of rights and services.

(a) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the 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.

(b) The resident or his or her legal representative has the right:

1. Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

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

(c) 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.

(d) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (h) of this section; and

(e) The facility must:

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1. 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:

- (i) The items and services that are included in nursing facility services under the State plan for which the resident may not be charged.

- (ii) 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

2. Inform each resident when changes are made to the items and services specified in paragraphs (e)1(i) & (ii) above.

- (f) The facility must inform each resident before, or at the time of admission, 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 Medicare or by the facility's per diem rate.

- (g) The facility must furnish a written description of legal rights which includes:

- 1. A description of the manner of protecting personal funds.

- 2. A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment by the State Medicaid Agency to determine the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels.

- 3. A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

- 4. A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

- (h) 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 to implement advance directives.

- (i) The facility must inform each resident of the name, specialty, and a way of contacting the physician responsible for his or her care.

- (j) The facility must prominently display, in the facility, written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

- (k) Notification of changes. A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is:

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

A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

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3. A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or 4. A decision to transfer or discharge the resident from the facility as specified in Section 420-5-10-.06.

(l) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member where there is:

1. A change in room or roommate assignment; or
2. A change in resident rights under Federal or State law or regulations.

(m) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(n) Protection of Resident Funds. The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(o) 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.

(p) Deposit of funds.

1. Funds in excess of \$50. The facility must deposit any 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 residents 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.

(q) Accounting and records. 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.

1. The system must preclude any co-mingling of resident funds with facility funds or with the funds of any person other than another resident.

2. The individual financial records must be available through quarterly statements and on request to the resident or his or her legal representative.

(r) 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 less than the SSI resource limit for one person; and

2. 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.

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

(t) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility. (u) Limitation on charges to personal funds. The

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facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid and Medicare.

(v) Free choice. The resident has the right to:

1. Choose a personal attending physician;
2. Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and
3. Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(w) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

1. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;
2. Except as provided in paragraph (ii) below, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;
3. The resident's right to refuse release of personal and clinical records does not apply when:

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(x) Grievances. A resident has the right to:

1. Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and
2. Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(y) Examination of survey results. A resident has the right to:

1. Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility.
2. In a place readily accessible to residents, the facility must make the results available for examination and must post either the results themselves or a notice of their availability; and
3. Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(z) Work. The resident has the right to:

1. Refuse to perform services for the facility;
2. Perform services for the facility, if he or she chooses, when:
  - (i) The facility has documented the need or desire for work in the plan of care;
  - (ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
  - (iii) Compensation for paid services is at or above prevailing rates; and
  - (iv) The resident agrees to the work arrangement described in the plan of care.

(aa) Mail. The resident has the right to privacy in written communications, including the right to:

1. Send and promptly receive mail that is unopened; and
2. Have access to stationery, postage, and writing implements at the resident's own expense.

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(bb) Access and visitation reports. The resident has the right and the facility must provide immediate access to any resident by the following:

1. Any representative of the Secretary;
2. Any representative of the State;
3. The resident's individual physician;
4. The State long term care ombudsman (established under section 712 of the Older Americans Act of 1965 as amended);
5. The Alabama Developmental Disabilities Advocacy Program (ADDAP) at the University of Alabama School of Law.
6. Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and
7. Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(cc) 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.

(dd) The facility must allow representatives of the State Ombudsman, described in paragraph (bb)4 above of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(ee) Telephone. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(ff) 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.

(gg) Married couples. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(hh) Self-Administration of Drugs. An individual resident may self-administer drugs if the interdisciplinary team, has determined that this practice is safe.

(ii)Refusal of Certain Transfers. An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate.

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Statutory Authority: Code of Alabama, 1975, 22-21-20, et seq.

History: Original rules filed: July 19, 1996; effective August 23, 1996.

**Alaska**

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7 AAC 12.890 PATIENTS' OR RESIDENTS' RIGHTS.

(a) Except as otherwise provided in AS 47.30.825 , a patient or a nursing facility resident has rights that include the following:

- (1) to associate and communicate privately with persons of the patient's or resident's choice;
- (2) to have reasonable access to a telephone to make and receive confidential calls;

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- (3) to mail and receive unopened correspondence;
  - (4) to be informed of the facility's grievance procedure for handling complaints relating to patient or resident care;
  - (5) to be free from physical or chemical restraints except as specified in AS 47.30.825 or 7 AAC 12.258 ;
  - (6) to be treated with consideration and recognition of the patient's or resident's dignity and individuality;
  - (7) to confidentiality of the patient's or resident's medical records and treatment;
  - (8) to be free from unnecessary or excessive medications;
  - (9) to private visits by the patient's or resident's spouse, except in a general acute care hospital, and, in a nursing facility, to share a room if both spouses are residents in the home, unless medical reasons or space problems require separation;
  - (10) to be informed in a language that the patient or resident understands, before or at the time of admission and during the patient's or resident's stay, of services that are available in the facility and their cost, including any costs for services or personal care items not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act;
  - (11) to be informed by a physician of the patient's or resident's medical condition, in a language that the patient or resident understands;
  - (12) to refuse to participate in experimental research, psychosurgery, lobotomy, electroconvulsive therapy, or aversive conditioning;
  - (13) to participate in the development of a plan of care, or discharge plan, and to receive instructions for self-care and treatment that include explanation of adverse symptoms and necessary precautions, as appropriate; and
  - (14) to be informed of the rights listed in (a) of this section and of all the rules and regulations governing patient or resident conduct and responsibility in a language the patient or resident understands.
- (b) A written notice that sets out the rights listed in (a) of this section must be posted in a conspicuous location, and a copy must be given to a patient, a resident, family member, or the legal representative of the patient or resident and, at cost, to a member of the public.
- (c) A written notice that sets out the facility procedures for receipt and safe keeping of patients' or residents' money and valuables. A receipt for safeguarded money and State valuables must be provided by the facility to the patient or resident at the time of admission and following changes in the facility's procedures.
- (d) A facility must establish written procedures to assure delivery of complaints by patients or residents to the facility's administration, that shall acknowledge receipt of a patient's or resident's complaint, and take appropriate action.
- History -Eff. 11/19/83, Register 88; am 5/28/92, Register 122  
Authority AS 18.05.040 AS 18.20.010 AS 18.20.060

**Arizona**

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R9-10-907. Resident Rights

An administrator shall ensure that:

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1. A resident:
  - a. Is treated with consideration, respect, and dignity, and receives privacy in:
    - i. Treatment,
    - ii. Activities of daily living,
    - iii. Room accommodations, and
    - iv. Visits or meetings with other residents or individuals,
  - b. Is free from:
    - i. Restraint and seclusion if not medically indicated unless necessary to prevent harm to self or others and the reason for restraint or seclusion is documented in the resident's medical records;
    - ii. Abuse and misappropriation of property; and
    - iii. Interference, coercion, discrimination, and reprisal from a staff member, the administrator, or a volunteer for exercising the resident's rights;
  - c. Is provided with reasonable accommodations unless the health or safety of the resident or another resident is at risk;
  - d. May formulate a health care directive;
  - e. May refuse to be photographed or refuse to participate in research, education, or experiments;
  - f. May consent to perform or refuse to perform work for the nursing care institution;
  - g. May choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
  - h. May participate in social, religious, political, and community activities that do not interfere with other residents;
  - i. May retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
  - j. May share a room with the resident's spouse if space is available and the spouse consents;
2. A resident or the resident's representative:
  - a. Participates in the planning of, or decisions concerning treatment;
  - b. Consents to or refuses examination and treatment;
  - c. Participates in developing the resident's care plan;
  - d. May manage the resident's financial affairs
  - e. May choose the resident's attending physician. If the resident's insurance or payor does not cover the cost of the medical services provided by the attending physician or the attending physician's designee, the resident is responsible for the costs;
  - f. May submit a grievance without retaliation from a staff member or volunteer;
  - g. May review the nursing care institution's current license survey report and, if applicable, plan of correction in effect;
  - h. Has access to and may communicate with any individual, organization, or agency;
  - i. May participate in a resident group;
  - j. May review the resident's financial records within two business days and medical records within one business day of the resident or the resident's representative's request;
  - k. May obtain a copy of the resident's financial records and medical records within two business days of the resident's request and in compliance with A.R.S. § 12-2295;

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- l. May select a pharmacy of choice if the pharmacy complies with nursing care institution policies and procedures and does not pose a risk to the resident;
  - m. Is informed of the method for contacting the resident's attending physician;
  - n. Is informed of the resident's total health condition;
  - o. Is provided with a copy of those sections of the resident's medical records that are required for continuity of care, free of charge according to A.R.S. § 12- 2295, if the resident is transferred or discharged;
  - p. Is informed in writing of a change in rates and charges 60 days before the effective date of the change; and
  - q. Except in the event of an emergency, is informed orally or in writing before the nursing care institution makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical records; and
3. Financial record information is disclosed only with the written consent of a resident or the resident's representative or as permitted by law.

Historical Note: Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-01)

### Arkansas

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#### 555.1 Freedom of Choice

To ensure that each patient admitted to a long term care facility is allowed freedom of choice in selecting a provider pharmacy, at the time of admission the patient or responsible party must specify in writing the pharmacy that they desire to use. The patient or responsible party must also sign the statement, or form, and the signed form should be filed with the signed Resident Rights' statement. The patient must be allowed to change the provider pharmacy if he desires. If true unit dose system is used by the facility the patient will not be afforded the freedom of choice of pharmacy provider.

#### 3000 RESIDENTS' RIGHTS

3001 The facility shall have written policies and procedures defining the rights and responsibilities of residents. The policies shall present a clear statement defining how residents are to be treated by the facility, its personnel, volunteers, and others involved in providing care.

3002 A copy of the synopsis of the residents' bill of rights must be prominently displayed within the facility.

3003 Each resident admitted to the facility is to be fully informed of these rights and of all rules and regulations governing resident conduct and responsibilities. The facility is to communicate these expectations/rights during the period of not more than two weeks before or five working days after admission, unless medically contraindicated in writing. The facility shall obtain a signed acknowledgement from the resident, his guardian or other person responsible for the resident. The acknowledgement is maintained in the resident's medical record.

3004 Appropriate means shall be utilized to inform non-English speaking, deaf, or blind



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residents of the residents' rights.

3005 Residents' Rights shall be deemed appropriately signed if:

- a. Residents capable of understanding: signed by resident before one witness.
- b. Residents incapable because of illness: The attending physician documents the specific impairment that prevents the residents from understanding or signing their rights. Responsible party and two witnesses sign.
- c. Residents mentally retarded: Rights read, and if he understands, resident signs before staff member and outside disinterested party. If he cannot understand, rights are explained to, and signed by, guardian before witness.
- d. Residents capable of understanding but acknowledges with other mark (X): Mark must be acknowledged by two witnesses.

3006 Staff members must fully understand all residents' rights.

3007 Facility staff will be provided a copy of residents' rights. Staff shall complete a written acknowledgement stating they have received and read the residents' rights. A copy of the acknowledgement shall be placed in each employee's personnel file.

3008 The facility's policies and procedures regarding residents' rights and responsibilities will be formally included in ongoing staff development program for all personnel, including new employees.

3009 Each resident admitted to the facility will be fully informed, prior to or at the time of admission, and as need arises during residency, of services available in the facility and any charges for services. Residents have the right to choose, at their own expense, a personal physician and pharmacist.

3010 The facility shall make available to all residents a schedule of the kinds of services and articles provided by the facility. A schedule of charges for services and supplies not included in the facility's basic per diem rate shall be provided at the time of admission. This schedule shall be updated should any change be made.

3011 Each resident admitted to the facility shall be fully informed by a physician of his medical condition. The resident shall be afforded the opportunity to participate in the planning of his total medical care and may refuse experimental treatment.

3012 Total resident care includes medical care, nursing care, rehabilitation, restorative therapies, and personal cleanliness in a safe and clean environment. Residents shall be advised by appropriate professional providers of alternative courses of care and treatments and the consequences of such alternatives when such alternatives are available.

3013 A resident may be transferred or discharged only for:

- a. Medical reasons;
- b. His welfare or the welfare of other residents;
- c. The resident presents a danger to the safety or health of other residents;
- d. Because the resident no longer needs the services provided by the facility;
- e. Non-payment for his stay; or,
- f. The facility ceases operation.

The resident shall be given reasonable written notice to ensure orderly transfer or discharge.

3014 The term "transfer" applies to the movement of the resident from facility to another facility.

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3015 "Medical reasons" for transfer or discharge shall be based on the resident's needs and are to be determined and documented by a physician. That documentation shall become a part of the resident's permanent medical record.

3016 "Reasonable notice of transfer or discharge" means the decision to transfer or discharge a resident shall be discussed with the resident and the resident will be told the reason(s) and alternatives available. A minimum of thirty (30) days written notice must be given. Transfer for the welfare of the resident or other residents may be affected immediately if such action is documented in the medical record.

3017 An appeals process for residents objecting to transfer or discharge shall be developed by the facility, in accordance with Ark. Code Ann. § 20-10-1005 as amended.

The process shall include:

- a. The written notice of transfer or discharge shall state the reason for the proposed transfer or discharge. The notice shall inform the resident that they have the right to appeal the decision to the Director within seven (7) calendar days. The resident must be assisted by the facility in filing the written objection to transfer or discharge.
- b. Within fourteen (14) days of the filing of the written objections a hearing will be scheduled.
- c. A final determination in the matter will be rendered within seven (7) days of the hearing.

3018 The facility shall provide preparation and orientation to resident designed to ensure a safe and orderly transfer or discharge.

3019 The facility must provide reasonable written notice of change in room or roommate.

3020 Each resident admitted to the facility will be encouraged and assisted to exercise all constitutional and legal rights as a resident and as a citizen including the right to vote, and the facility shall make reasonable accommodations to ensure free exercise of these rights. Residents may voice grievances or recommend changes in policies or services to facility staff or to outside representatives of their choice, free from restraint, coercion, discrimination, or reprisal.

3021 Residents shall have the right to free exercise of religion including the right to rely on spiritual means for treatment.

3022 Complaints or suggestions made to the facility's staff shall be responded to within ten (10) days. Documentation of such response will be maintained by the facility administrator or his designee.

3023 Each resident may retain and use personal clothing and possessions as space and regulations permit.

3024 A representative resident council shall be established in each facility. The resident council's duties shall include:

- a. Review of policies and procedures required for implementation of resident rights.
- b. Recommendation of changes or additions in the facility's policies and procedures, including programming.
- c. Representation of residents in their complaints to the Office of Long Term Care or any other person or agency.
- d. Assist in identification of problems and orderly resolution of same.

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3025 The facility administrator shall designate a staff coordinator and provide suitable accommodations within the facility for the residents' council. The staff coordinator shall assist the council in scheduling regular meetings and preparing written reports of meetings for dissemination to residents of the facility. The staff coordinator may be excluded from any meeting of the council.

3026 The facility shall inform residents' families of the right to establish a family council within the facility. The establishment of such council shall be encouraged by the facility. This family council shall have the same duties and responsibilities as the resident council and shall be assisted by the staff coordinator designated to assist the resident council.

3027 Each resident admitted to the facility may manage his personal financial affairs, or if the resident request such affairs be managed by the facility, an accounting shall be maintained in accordance with applicable regulations.

3028 Residents shall be free from mental and physical abuse, chemical and physical restraints (except in emergencies) unless authorized, in writing, by a physician, and only for such specified purposes and limited time as is reasonably necessary to protect the resident from injury to himself or others.

3029 Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

3030 Physical abuse refers to corporal punishment or the use of restraints as a punishment.

3031 Drugs shall not be used to limit, control, or alter resident behavior for convenience of staff.

3032 Physical restraint includes the use of devices designed or intended to limit residents' total mobility.

3033 Physical restraints are not to be used to limit resident mobility for the convenience of staff, as a means of punishment, or when not medically required to treat the resident's medical symptoms. If a resident's behavior is such that it will result in injury to himself or others any form of physical restraint utilized shall be in conjunction with a treatment procedure designed to modify the behavioral problems for which the resident is restrained and only after failure of therapy designed or intended to modify the threatening behavior.

3034 The facility's written policy and procedures governing the use of restraint shall specify which staff members may authorize the use of restraints and must clearly specify the following:

- a. Orders shall indicate the specific reasons for the use of restraints.
- b. Use of restraints must be temporary and the resident will not be restrained for an indefinite or unspecified amount of time.
- c. Application of restraints shall not be allowed for longer than 12 hours unless the resident's condition warrants and specified medical authorization is maintained in the resident's medical record.
- d. A resident placed in restraints shall be checked at least every thirty (30) minutes by appropriately trained staff. A written record of this activity shall be maintained in the resident's medical record. The opportunity for motion and exercise shall be provided for a period of not less than ten (10) minutes during each two (2) hours in which restraints are employed, except at night.
- e. Reorder, extensions or re-imposition of restraints shall occur only upon review of

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the resident's condition by the physician, and shall be documented in the physician's progress notes.

f. The use of restraints shall not be employed as punishment, the convenience of staff, or a substitute for supervision.

g. Mechanical restraints must be employed in such manner as to avoid physical injury to the resident and provide a minimum of discomfort.

h. The practice of locking residents behind doors or other barriers also constitutes physical restraint and must conform to the policies and procedures for the use of restraints.

3035 Each resident is assured confidential treatment of his personal and medical records. Residents may approve or refuse the release of such records to any individual except in case of a transfer to another health care institution, or as required by law or third party payment contract.

3036 Each resident will be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and care for personal needs.

3037 Staff shall display respect for residents when speaking with, caring for, or talking about residents, and shall seek to engage in the constant affirmation of resident individuality and dignity as a human being.

3038 Schedules of daily activities shall provide maximum flexibility and allow residents to exercise choice in participation. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, and entertainment will be elicited and respected by the facility.

3039 Residents shall be examined or treated in a manner that maintains and ensures privacy. A closed door or a drawn curtain shall shield the resident from passers-by. People not involved in the care of the residents are not to be present during examination or treatment without the residents' consents.

3040 Privacy will be afforded residents during toileting, bathing, and other activities of personal hygiene.

3041 Residents may associate or communicate privately with persons of their choice, and may send or receive personal mail unopened, unless medically contraindicated and documented by the physician in the medical record.

3042 Policies and procedures shall permit residents to receive visits from anyone they wish; provided a particular visitor may be restricted for the following reasons:

a. The resident refuses to see the visitor.

b. The resident's physician specifically documents that such a visit would be harmful to the resident's health.

c. The visitor's behavior is unreasonably disruptive to the facility. This does not include those individuals who, because they advocate administrative change to protect resident rights, are considered a disruptive influence by the administrator.

3043 Decisions to restrict a visitor shall be reviewed and evaluated each time the resident's plan of care or medical orders are reviewed by the physician or nursing staff, or at the resident's request.

3044 Accommodations will be provided for residents to allow them to receive visitors in reasonable comfort and privacy.

3045 Residents are allowed to manage their own personal financial affairs.

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3046 Should the facility manage the resident's personal financial affairs, this authorization must be in writing and shall be signed appropriately as follows:

- a. If the resident is capable of understanding the authorization shall be signed by the resident and one (1) witness.
- b. If the resident is mentally retarded the authorization shall be read and if he/she understands, the resident will sign along with a staff member and an outside disinterested party. If he/she cannot understand, the authorization should be explained and signed by the guardian and witness. If the resident is capable of understanding and acknowledges with a mark (X) then two witnesses are required.

3047 The facility shall have written policies and procedures for the management of client trust accounts.

3048 An employee shall be designated to be responsible for resident accounts.

3049 The facility shall establish and maintain a system that assures full and complete accounting of residents' personal funds using generally accepted accounting principles.

3050 The facility shall not commingle resident funds with any other funds other than resident funds.

3051 The facility system of accounting includes written receipts for funds received by or deposited with the facility, and disbursements made to or for the resident.

3052 All personal allowance monies received by the facility are placed in a collective checking account.

3053 The checking account will be reconciled on a monthly basis.

3054 Any cost incurred for this account shall not be charged to the resident.

3055 Any interest earned from this account shall not be charged to the resident.

3056 When appropriate individual savings accounts shall be opened for residents in accordance with Social Security rules governing savings accounts.

3057 A cash fund specifically for petty cash shall be maintained in the facility to accommodate the small cash requirement of residents.

3058 The facility shall, at the resident's request, keep on deposit personal funds over which the resident has control. Should the resident request these funds, they are given to him on request with receipts maintained by the facility and a copy to the resident.

3059 The financial record must be available to the resident and his/her guardian, and responsible party.

3060 If the facility makes financial transactions on a resident's behalf, the resident, guardian, or responsible party shall receive an itemized accounting of disbursements and current balances at least quarterly.

3061 A copy of the resident's quarterly statement shall be maintained in the facility.

#### SYNOPSIS OF RESIDENTS' BILL OF RIGHTS WELCOME

This facility must ensure and protect the human rights of every individual in residence and to that end will provide a clean, healthy attractive environment wherein the resident will receive treatment without discrimination as to race, color, religion, sex, national origin or source of payment. Upon request, every resident has the right to the name and function of persons providing them service and the identification of other health care facilities, nursing homes, hospitals and other institutions that may provide them with service.

#### INFORMATION THE RESIDENT HAS THE RIGHT TO:

- \_ Be fully informed before, or at admission, of his rights and responsibilities as a resident

## State Regulations pertaining to category\_resident\_rights AR

Know immediately of any changes or amendments to those rights and responsibilities.  
 Be fully informed prior to or at admission and during stay, of services available in the facility and of related charges of services.

Reasonable notice of any changes in the costs or availability of services.

### MEDICAL CONDITION AND TREATMENT

#### AS A RESIDENT, YOU HAVE THE RIGHT TO:

Choose, at your own expense, a personal physician and pharmacist.

Be fully informed by a physician of your health and medical condition unless the physician documents in your medical record that such knowledge is contraindicated.

Be given the opportunity to participate in planning your total care and medical treatment.

Be given the opportunity to refuse treatment.

Be given the opportunity to refuse to participate in experimental research.

Receive rehabilitative and restorative therapies.

Be advised by physician or appropriate professional staff of alternative courses of care and treatments and their consequences.

Receive medical care, nursing care and personal cleanliness in a safe and clean environment.

#### EXERCISING RIGHTS AS A RESIDENT, YOU ARE ENCOURAGED OR WILL BE ASSISTED TO:

Exercise all constitutional and legal rights as a resident and as a citizen, including the right to vote.

Voice grievances and recommend changes in nursing home policies and services to facility staff and to outside representatives of your choice, free from restraint, interference, coercion, discrimination or reprisal. All complaints and suggestions made to the nursing home must be responded to.

Exercise your religious beliefs including the right to rely on spiritual means for treatment.

Participate in the Resident Council and be informed of its activities and recommendations to the facility.

#### TRANSFER, DISCHARGE, AND CHANGE OF ACCOMMODATION EVERY RESIDENT HAS THE RIGHT TO KNOW:

You will be transferred or discharged only for: medical reasons, for your welfare or that of others, you no longer need the services, the facility ceases operations, or for non-payment.

Except in emergency the facility must give you a thirty (30) day written notice of transfer or discharge. You shall be given reasonable notice of change of room or roommate within the facility.

Transfer and discharge shall be discussed with you and you shall be told the reason and alternatives that are available.

There is an appeals process for residents objecting to transfer or discharge.

You shall be provided preparation and orientation to ensure a safe and orderly transfer or discharge.

You shall be given reasonable notice of change of room or roommate change in the facility.

State Regulations pertaining to category\_resident\_rights AR

FINANCIAL AFFAIRS: AS A RESIDENT YOU HAVE THE RIGHT TO: \_ Manage your personal financial affairs, or delegate that management to a responsible party.

\_ Delegate that management or a part thereof to the nursing home and receive at least a quarterly report of transactions made on your behalf.

FREEDOM FROM ABUSE AND RESTRAINTS AS A RESIDENT YOU HAVE THE RIGHT TO BE:

\_ Free from mental and physical abuse (Mental abuse includes humiliation, harassment, and threats of punishment or deprivation. Physical abuse refers to corporal punishment and the use of restraints as a punishment.)

\_ Free from chemical and physical restraints except when authorized in writing by a physician for a specific and limited period of time and only to protect you from injury to yourself or others.

PRIVACY: EVERY RESIDENT HAS THE RIGHT TO:

\_ Considerate and respectful care. Every resident will be treated with consideration, respect and full recognition of his dignity and individuality.

\_ Privacy during treatment and care of personal needs. People not involved in the care of residents shall not be present without the consent from the resident during examinations and treatment.

\_ Know that he is assured confidential treatment of all information contained in his medical records and that his or his legal appointee's written consent is required for the release of information to persons not otherwise authorized to receive it.

\_ Know that photographs and interviews shall not be released without written consent of the resident or his responsible party.

\_ Privacy during visits with spouse.

\_ Share a room, in the case of married residents, unless medically contraindicated by a physician in writing.

WORK

Every resident has the right to refuse work. No resident is required to perform any service for the nursing home.

ACTIVITIES: AS A RESIDENT, YOU HAVE THE RIGHT TO:

\_ Participate in activities of social, religious, and community groups unless medically contraindicated in writing by your physician.

\_ Refuse to participate in activities.

\_ Be provided a schedule of daily activities that allow flexibility in what you will do and when you will do it.

\_ Individual preferences regarding such things as food, clothing, religious activities, friendships, activity programs and entertainment. Such preferences shall be elicited and respected by the nursing home staff.

PERSONAL POSSESSIONS EVERY RESIDENT HAS THE RIGHT TO:

\_ Associate and communicate privately with persons of his choice, and send and receive personal mail unopened unless medically contraindicated and documented by the physician in the medical record.

\_ Space to receive visitors in reasonable comfort and privacy.

\_ Retain and use personal possessions and clothing as space permits.

IF YOU FEEL YOUR RIGHTS HAVE BEEN VIOLATED BY THE LONG TERM CARE FACILITY CALL THE OFFICE OF LONG TERM CARE AT 501-682-8430 OR

YOUR LOCAL NURSING HOME OMBUDSMAN AT THE LOCAL AREA AGENCY ON AGING (LISTED IN YOUR TELEPHONE DIRECTORY) OR THE ADULT PROTECTIVE SERVICES AT 501-682-8491.

**California**

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§72527. Patients' Rights.

(a) Patients have the rights enumerated in this section and the facility shall ensure that these rights are not violated. The facility shall establish and implement written policies and procedures which include these rights and shall make a copy of these policies available to the patient and to any representative of the patient. The policies shall be accessible to the public upon request. Patients shall have the right:

(1) To be fully informed, as evidenced by the patient's written acknowledgement prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct.

(2) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care including the identification of medical, nursing and psychosocial needs and the planning of related services.

(4) To consent to or to refuse any treatment or procedure or participation in experimental research.

(5) To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure. The disclosure of material information for administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability to regain use of a normal bodily function shall include the disclosure of information listed in [Section 72528\(b\)](#).

(6) To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients or for nonpayment for his or her stay and to be given reasonable advance notice to ensure orderly transfer or discharge. Such actions shall be documented in the patient's health record.

(7) To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination or reprisal.

(8) To manage personal financial affairs, or to be given at least a quarterly accounting of financial transactions made on the patient's behalf should the facility accept written delegation of this responsibility subject to the provisions of [Section 72529](#).

(9) To be free from mental and physical abuse.

(10) To be assured confidential treatment of financial and health records and to approve or refuse their release, except as authorized by law.



State Regulations pertaining to category\_resident\_rights CA

- (11) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs.
  - (12) Not to be required to perform services for the facility that are not included for therapeutic purposes in the patient's plan of care.
  - (13) To associate and communicate privately with persons of the patient's choice, and to send and receive personal mail unopened.
  - (14) To meet with others and participate in activities of social, religious and community groups.
  - (15) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the patient or other patients.
  - (16) If married, to be assured privacy for visits by the patient's spouse and if both are patients in the facility, to be permitted to share a room.
  - (17) To have daily visiting hours established.
  - (18) To have visits from members of the clergy at any time at the request of the patient or the patient's representative.
  - (19) To have visits from persons of the patient's choosing at any time if the patient is critically ill, unless medically contraindicated.
  - (20) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.
  - (21) To have reasonable access to telephones and to make and receive confidential calls.
  - (22) To be free from any requirement to purchase drugs or rent or purchase medical supplies or equipment from any particular source in accordance with the provisions of Section 1320 of the Health and Safety Code.
  - (23) To be free from psychotherapeutic drugs and physical restraints used for the purpose of patient discipline or staff convenience and to be free from psychotherapeutic drugs used as a chemical restraint as defined in [Section 72018](#), except in an emergency which threatens to bring immediate injury to the patient or others. If a chemical restraint is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient and used only for a specified and limited period of time.
  - (24) Other rights as specified in Health and Safety Code, Section 1599.1.
  - (25) Other rights as specified in Welfare and Institutions Code, Sections 5325 and 5325.1, for persons admitted for psychiatric evaluations or treatment
  - (26) Other rights as specified in Welfare and Institutions Code Sections 4502, 4503 and 4505 for patients who are developmentally disabled as defined in Section 4512 of the Welfare and Institutions Code.
- (b) A patient's rights, as set forth above, may only be denied or limited if such denial or limitation is otherwise authorized by law. Reasons for denial or limitation of such rights shall be documented in the patient's health record.
- (c) If a patient lacks the ability to understand these rights and the nature and consequences of proposed treatment, the patient's representative shall have the rights specified in this section to the extent the right may devolve to another, unless the representative's authority is otherwise limited. The patient's incapacity shall be determined by a court in accordance with state law or by the patient's physician unless the physician's determination is disputed by the patient or patient's representative.

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(d) Persons who may act as the patient's representative include a conservator, as authorized by Parts 3 and 4 of Division 4 of the Probate Code (commencing with Section 1800), a person designated as attorney in fact in the patient's valid durable power of attorney for health care, patient's next of kin, other appropriate surrogate decision maker designated consistent with statutory and case law, a person appointed by a court authorizing treatment pursuant to Part 7 (commencing with Section 3200) of Division 4 of the Probate Code, or, if the patient is a minor, a person lawfully authorized to represent the minor.

(e) Patients' rights policies and procedures established under this section concerning consent, informed consent and refusal of treatments or procedures shall include, but not be limited to the following:

(1) How the facility will verify that informed consent was obtained or a treatment or procedure was refused pertaining to the administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability of the patient to regain the use of a normal bodily function.

(2) How the facility, in consultation with the patient's physician, will identify consistent with current statutory case law, who may serve as a patient's representative when an incapacitated patient has no conservator or attorney in fact under a valid Durable Power of Attorney for Health Care.

Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Sections 1276, 1320, 1599, 1599.1, 1599.2 and 1599.3, Health and Safety Code; and Cobbs v. Grant (1972) 8 Cal.3d 229.

**HISTORY**

1. Amendment of subsections (a) and (b), repealer of subsection (c), and new subsections (c), (d), and (e) filed 5-27-92; operative 5-27-92 (Register 92, No. 22).

§ 72315. Nursing Service -Patient Care.

(b) Each patient shall be treated as individual with dignity and respect and shall not be subjected to verbal or physical abuse of any kind.

**Colorado**

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**Part 12 – Residents' Rights**

12.1 RESIDENTS' RIGHTS. The facility shall adopt a statement of the rights and responsibilities of their residents, post it conspicuously in a public place, and provide a copy to each resident or guardian before admission. The facility and staff shall observe these rights in the care, treatment, and supervision of the residents. Rights shall include at least:

12.1.1 The right to receive adequate and appropriate health care consistent with established and recognized practice standards within the community and with long-term care facility rules issued by the Department;

12.1.2 The right to civil and religious liberties, including:

(1) Knowledge of available choices and the right to independent personal decisions, which will not be infringed upon;

(2) The right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights;

State Regulations pertaining to category\_resident\_rights CO

(3) The right to vote;

(4) The right to participate in activities of the community both inside and outside the facility;

12.1.3 The right to present grievances on behalf of him/herself or others to the facility's staff or administrator, to governmental officials, or to any other person, without fear of reprisal, and to join with other patients or individuals within or outside of the facility to work for improvements in resident care, including:

(1) The right to participate in the resident council;

(2) The right to be informed of the address and telephone number for the Department and the state and local Nursing Home Ombudsman; the facility shall post these numbers conspicuously;

12.1.4 The right to manage his or her own financial affairs or to have a quarterly accounting of any financial transactions made in his or her behalf, should the resident delegate such responsibility to the facility for any period of time;

12.1.5 The right to be fully informed, in writing, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges, including charges for services not covered under Medicare or Medicaid or not covered by the basic per diem rate;

12.1.6 The right to be adequately informed of his or her medical condition and proposed treatment unless otherwise indicated by his or her physician, and to participate in the planning of all medical treatment, including:

(1) The right to refuse medication and treatment, unless otherwise indicated by his or her physician, and to know the consequences of such action;

(2) The right to participate in discharge planning; and

(3) The right to review and obtain copies of his or her medical records in accordance with Part 5 of Chapter II of these regulations.

(4) For residents whose primary language is other than English, the facility shall arrange for persons speaking the resident's language to facilitate daily communications and to attend assessment and care planning conferences in order to allow the resident to participate in those activities. This section does not require a translator to be present daily as long as the resident is enabled to engage in necessary daily communication within the facility.

(5) For residents with sensory impairments that inhibit daily communication, the facility shall provide assistance so that they may participate in care and activities of daily living.

12.1.7 The right to have private and unrestricted communications with any person of his or her choice; including

(1) The right to privacy for telephone calls;

(2) The right to receive mail unopened;

(3) The right to private consensual sexual activity;

12.1.8 The right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints initiated through the judgement of professional staff for a specified and limited period of time or on the written authorization of a physician;

12.1.9 The right to freedom of choice in selecting a health care facility;

12.1.10 The right of copies of the facility's rules and regulations, including a copy of these rights, and an explanation of his or her rights and responsibility to obey all

## State Regulations pertaining to category\_resident\_rights CO

reasonable rules and regulations of the facility and to respect the personal rights and private property of the other patients;

(1) If the resident does not speak English, the right to an explanation of rights and responsibilities in a language the resident can understand; and

(2) The right to see facility policies, upon request, and state survey reports on the facility;

12.1.11 The right to be transferred or discharged only for medical reasons or his or her welfare, or that of other residents, or for nonpayment for his or her stay, not for raising concerns or complaints, and the right to be given reasonable advance notice of any transfer or discharge, except in the case of an emergency as determined by professional staff, in accordance with the transfer procedures prescribed by Section 12.6;

12.1.12 The right to have privacy in treatment and in caring for personal needs, confidentiality in the treatment of personal and medical records, and security in storing and using personal possessions;

12.1.13 The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement of the services provided by the facility, including those required to be offered on an as-needed basis;

12.1.14 The right of any person eligible to receive Medicaid to select any long-term care facility certified for participation in Medicaid where space is available.

12.2 DEVOLUTION OF RIGHTS. The rights of a long-term care resident who is adjudicated incompetent under state law devolve to the resident's legal guardian or sponsoring agency, who are responsible to assure that the resident is provided with adequate, appropriate, and respectful health care and that his or her rights are observed. In the case of devolution, the facility shall observe these rights with respect to the guardian or sponsoring agency.

12.3 STAFF TRAINING IN RESIDENTS' RIGHTS. The facility shall provide a copy of the facility's statement of residents' rights at new employee orientation. Current employees shall be provided a copy of the rights no later than the first pay period after receipt of these rules. The facility shall train all staff in the observation and protection of residents' rights. Social services staff shall assist in residents' rights orientation for new employees.

12.4 GRIEVANCE PROCEDURE. The facility shall develop a grievance procedure, which it shall post conspicuously in a public place, for presentation of grievances by residents, the resident council, or members of the resident's family regarding any conditions, treatment, or violations of rights of any resident by the facility or staff (regardless of the consent of the victim of the alleged improper conduct).

12.4.1 The facility shall designate a full-time staff member ("staff designee") to receive all grievances.

12.4.2 The facility shall establish a grievance committee consisting of the chief administrator or his or her designee, a resident selected by the facility's residents, and a third person agreed upon by the administrator and the resident representative.

12.4.3 Any resident or legal representative, or member of a resident's family or the resident council may present a grievance to the facility staff designee orally or in writing within 14 days of the incident giving rise to the grievance.

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12.4.4 The staff designee shall confer with persons involved in the incident and other relevant persons and within 3 days of receiving the grievance shall provide a written explanation of findings and proposed remedies to the complainant and the aggrieved party, if other than the complainant, and legal representative, if any. Where appropriate due to the mental or physical condition of the complainant or aggrieved party, an oral explanation shall accompany the written one.

12.4.5 If the complainant or aggrieved party is dissatisfied with the findings and remedies of the staff designee or their implementation, within 10 days of receiving the designee's explanation, the complainant or aggrieved party may file the grievance orally or in writing along with any additional information it wishes to the grievance committee.

12.4.6 The committee shall confer with persons involved in the incident and other relevant persons, including the complainant, and within 10 days of the date of the appeal shall provide a written explanation of its findings and proposed remedies to the complainant and the aggrieved party, if other than the complainant, and to the legal representative, if any. Where appropriate due to the mental or physical condition of the complainant, or aggrieved party, an oral explanation shall accompany the written one.

12.4.7 If the complainant or aggrieved party is dissatisfied with the findings and remedies of the grievance committee or their implementation (except for grievances regarding physician or physician-prescribed treatment), the person may file the grievance in writing with the Executive Director of the Department within 10 days of receipt of the written findings of the grievance committee. The Department shall then investigate the facts and circumstances of the grievance and make written findings of fact, conclusions, and recommendations and provide them to the complainant, aggrieved party, legal representative, if any and the facility administrator.

12.4.8 If the complainant or facility administrator is aggrieved by the Department's findings and recommendations, he or she may request, within 30 days of receipt of the findings and recommendations, a hearing to be conducted by the Department pursuant to C.R.S. 24-4-105.

12.5 RESIDENT ADVISORY COUNCIL. Each facility shall establish a resident advisory council consisting of no less than five members selected from the facility's residents.

12.5.1 The council shall be conducted by residents. It shall have the opportunity to meet without staff present and shall meet at least monthly with the administrator and a staff representative to make recommendations concerning facility policies. Staff shall respond to these suggestions in writing by the next meeting. Minutes of council meetings shall be maintained and posted or otherwise available to residents.

12.5.2 The council may present grievances to the grievance committee on behalf of residents.

12.5.3 The council shall elect its officers and establish a process for obtaining views of all facility residents.

12.6 TRANSFER, DISCHARGE, AND ROOM CHANGE PROCEDURES AND APPEALS.

12.6.1 Definitions:

(1) "Discharge" means movement of a resident from a nursing facility to a noninstitutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

## State Regulations pertaining to category\_resident\_rights CO

(2) "Transfer" means movement of a resident from a nursing facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility.

(3) "Room change" refers to the movement of a resident from one room to another.

12.6.2 A resident shall not be transferred or discharged unless:

(1) The transfer or discharge is necessary for the resident's welfare. Facilities that are certified to participate in the Medicaid and/or Medicare reimbursement program must also demonstrate that the resident's needs cannot be met in the facility;

(2) The transfer or discharge is only for medical reasons. Facilities that are certified to participate in the Medicaid and/or Medicare reimbursement program must also demonstrate that the resident's needs cannot be met in the facility;

(3) The transfer or discharge is necessary to preserve the welfare of other residents; or

(4) The resident has failed to pay for (or to have paid under Medicaid or Medicare) a stay at the facility. Facilities that are certified to participate in the Medicaid and/or Medicare reimbursement program must also provide reasonable and appropriate notice of non-payment and its consequences to the resident prior to initiating a transfer or discharge of a resident for reasons of non-payment.

12.6.3 When the facility transfers or discharges a resident under any of the circumstances specified in 12.6.2, the resident's clinical record must be documented. The documentation must be made by:

(1) the resident's physician when the transfer or discharge is necessary under 12.6.2 (1) and (2); and

(2) a physician when transfer or discharge is necessary under 12.6.2 (3). Regulations Resident Rights – CO

12.6.4 Whenever a resident is transferred or discharged for the reasons in 12.6.2 (1), 12.6.2 (2) or 12.6.2 (3), the facility must provide assessment and reasonable intervention prior to determining the need for the transfer or discharge. The assessment, attempted intervention and reason for the discharge or transfer shall be documented in the clinical record.

12.6.5 The facility shall provide reasonable advance notice to the resident and the family member or legal representative of the resident of its intent to transfer or discharge a resident. Reasonable advance notice means notice in writing at least thirty (30) days before the transfer or discharge except in the following circumstances in which the professional staff determines there is an emergency, in which case the notice must be made as soon as practicable before the transfer or discharge:

(1) the safety of residents in the facility is endangered;

(2) the health of residents in the facility is endangered; or

(3) an immediate transfer or discharge is required by the resident's urgent medical needs.

12.6.6 The written notice shall be in a language and manner understandable to the resident and the resident's legal representative, if applicable, and shall include:

(1) The reason for the transfer or discharge;

(2) The effective date of the transfer or discharge;

(3) The location to which the resident is transferred or discharged;

(4) The grievance procedure; and

(5) the following text:

## State Regulations pertaining to category\_resident\_rights CO

"You have a right to appeal the nursing care facility's decision to transfer or discharge you. If you think you should not be transferred or discharged, you may appeal to \_\_\_\_\_ (staff designee). If you do not wish to handle the appeal yourself, you may use an attorney, relative, or friend. If your appeal is not resolved to your satisfaction by the staff designee, you can continue your appeal to the nursing care facility's grievance committee and, if necessary, the Colorado Department of Public Health and Environment. You may direct questions regarding this notice to the Department of Public Health and Environment at \_\_\_\_\_ (division name, address and phone number)."

(a) Nursing care facilities that are certified for Medicaid and/or Medicare reimbursement, must also add the following statement:

"In addition, if you have questions or complaints about the transfer or discharge or would like help to appeal, call or write the State or Local Long Term Care Ombudsman at \_\_\_\_\_ (phone numbers / addresses)."

(b) If the resident who is being involuntarily transferred is a person with a developmental disability for whom an agency has been authorized by law as the agency responsible for advocacy and protection of the rights of persons with developmental disabilities, the nursing care facility must also furnish to resident and the resident's family member or legal representative, the following statement:

"In addition, if you have questions or complaints about the transfer or discharge or would like help to appeal, call or write the \_\_\_\_\_, (name, phone number and address of the agency.)"

(c) If the resident who is being transferred is a person with mental illness for whom an agency has been authorized by law as the agency responsible for the advocacy and protection of persons with mental illness, the nursing care facility must also furnish to the resident and the resident's family member or legal representative the following statement:

"In addition, if you have questions or complaints about the transfer or discharge or would like help to appeal, call or write the \_\_\_\_\_, (name, phone number and address of the agency.)"

12.6.7 In cases where a resident is being involuntarily transferred or discharged from a nursing care facility that is certified to participate in the Medicaid and/or Medicare reimbursement program, a copy of the written notice (including the grievance and appeal rights, and the name, address and telephone number of the State and Local Long Term Care Ombudsman) shall also be sent the State or Local Long Term Care Ombudsman at the same time it is sent to the resident or as soon as the determination is made that the transfer or discharge is involuntary.

12.6.8 A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer and discharge from the facility.

12.6.9 When the facility intends to move a resident to another room in the facility without the resident's consent, the facility shall provide the resident and a family member or legal representative with written notice of such intent to be received at least 5 days before such move, including an explanation on their right to appeal.

12.6.10 A resident shall not be involuntarily transferred, discharged, or moved to another room within the facility until:

- (1) The expiration of the notice period, or
- (2) The time for any further administrative appeals has expired, or

(3) The grievance or appeal has been resolved.

12.7 RESIDENT RELOCATION. If a facility intends to close or change bed classification, it shall notify the Department of Public Health And Environment and the Colorado Department of Health Care Policy And Financing, if it has Medicaid residents, at least 60 days before it expects to cease or change operations and at least 7 days before it notifies residents and families.

12.7.1 The facility shall appoint one staff person to coordinate resident relocation activities.

12.7.2 If the facility has Medicaid residents, it shall review its relocation plan with the Department of Health Care Policy And Financing.

12.7.3 Any facility certified for participation in Medicaid shall follow the relocation procedures prescribed by regulations of the Department of Social Services. Other facilities shall provide for an orderly relocation of residents, designed to minimize risks and ensure optimal placement of all residents, in coordination with the Department of Health, the Nursing Home Ombudsman, and local public and private social service agencies.

### **Connecticut**

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#### 19-13-D78. Patient's Bill of Rights and Responsibilities

An agency shall have a written bill of rights and responsibilities governing agency services which shall be made available and explained to each patient or representative at the time of admission. Such explanation shall be documented in the patient's clinical record. The bill of rights shall include but not be limited to:

- (a) A description of available services, unit charges and billing mechanisms. Any changes in such must be given to the patient orally and in writing as soon as possible but no later than thirty (30) working days from the date the agency becomes aware of a change;
- (b) Policy on uncompensated care;
- (c) Criteria for admission to service and discharge from service;
- (d) Information regarding the right to participate in the planning of the care to be furnished, the disciplines that will furnish care, the frequency of visits proposed and any changes in the care to be furnished, the person supervising the patients' care and the manner in which that person may be contacted;
- (e) Patient responsibility for participation in the development and implementation of the home health care plan;
- (f) Right of the patient or designated representative to be fully informed of patients' health condition, unless contraindicated by a physician in the clinical record;
- (g) Right of the patient to have his or her property treated with respect;
- (a) Explanation of confidential treatment of all patient information retained in the agency and the requirement for written consent for release of information to persons not otherwise authorized under law to receive it;
- (b) Policy regarding patient access to the clinical record;
- (c) Explanation of grievance procedure and right to file grievance without discrimination or reprisal from agency regarding treatment or care to be provided or regarding the lack of respect for property by anyone providing agency services;



(d) Procedure for registering complaints with the commissioner and information regarding the availability of the Medicare toll-free hotline, including telephone number, hours of operation for receiving complaints or questions about local home health agencies;

(e) Agency's responsibility to investigate complaints made by a patient, patient's family or guardian regarding treatment or care provided or that fails to be provided and lack of respect for the patient's property by anyone providing agency services. Agency complaint log shall include date, nature and resolution of the complaint.

(Effective September 20, 1978; Amended December 28, 1992).

## Delaware

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### 4.0 General Requirements

4.6 The nursing home must establish written policies regarding the rights and responsibilities of patients, and these policies and procedures are to be made available to patients, guardians, next of kin, or sponsoring agency(ies). (See Appendix A - Patient's Bill of Rights)

#### 7.7.1 The Nurse Aide Role and Function

##### Key Concepts:

Introduces the characteristics of an effective nurse aide: personal attributes, on-the-job conduct, appearance, grooming, health and ethical behaviour. Also presented are the responsibilities of the nurse aide as a member of the patient care team. Legal aspects of patient care and patient rights are presented. Relevant Federal and State statutes are referenced.

7.7.2 Demonstrate behaviour which maintains resident's and/or client's rights.

7.7.2.1 Provide privacy and maintenance of confidentiality.

7.7.2.2 Promote the resident's right to make personal choices to accommodate individual needs.

7.7.2.3 Give assistance in resolving grievances.

7.7.2.4 Provide needed assistance in giving to and participating in resident and family groups and other activities.

7.7.2.5 Maintain care and security of resident's personal possessions.

7.7.2.6 Provide care which maintains the residents free from abuse, mistreatment or neglect and report any instances of such poor care to appropriate facility staff.

7.7.2.7 Maintain the resident's environment and care through appropriate nurse aide behaviour so as to minimize the need for physical and chemical restraints.

## APPENDIX A

These Regulations are adopted by the Director, Division of Public Health pursuant to 16 Del.C. 1121,1122,1123, 1124.

### PATIENT'S BILL OF RIGHTS

#### RESPECT

1. Every patient and resident shall be treated with consideration, respect and full recognition of their dignity and individuality.

2. Every patient and resident shall receive care, treatment and services which are adequate and appropriate.

### SERVICES AND PAYMENT

3. Each patient and resident and their families shall, prior to or upon admission, and during their stay, receive a written statement of the services provided by the facility including those required to be offered on an "as-needed" basis.

A. They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the facility's basic per diem rate.

B. Upon receiving such statement, the patient and his representative shall sign a written receipt which shall be retained by the facility.

### TREATMENT

4. Each patient shall receive from the attending physician or resident physician of the facility, in lay terms, complete and current information regarding his diagnosis, treatment and prognosis, unless medically inadvisable.

5. Each patient and resident:

A. Shall participate in the planning of their medical treatment;

B. May refuse medication or treatment;

C. Shall be informed of the medical consequences of all medication and treatment alternatives; and

D. Shall give prior informed consent to participation in any experimental research, which shall be verified by his signature and the signature of a family member or representative.

6. The facility shall see to it that the name, address and telephone number of the patient or resident's physician is readily accessible to them at their bedside.

7. Each patient and resident's medical care program shall be conducted discreetly and in accordance with the patient's need for privacy.

A. Persons not directly involved in patient care shall not be present during medical examinations, treatment and case discussion.

B. Personal and medical records shall be treated confidentially; shall not be made public without the consent of the patient or resident; shall not be released to any person inside or outside the facility who has no demonstrable need for such records.

8. Every patient and resident shall be free from mental and physical abuse and also from chemical and physical restraints, restraints, unless authorized by a physician according to clear and indicated medical requirement.

### COMMUNICATIONS

9. Every patient and resident shall receive from the Administrator or staff of the facility a courteous and reasonable response to his requests.

10. Every patient and resident shall be provided with information as to any relationships of the facility to other health care facilities as far as the patient's care is concerned.

11. To maintain reasonable continuity of care, every patient and resident at the least shall be informed of the availability of physicians and appointment times.

12. Every patient and resident may associate privately with people and groups of his own choice at any reasonable hour.

A. May send and receive mail promptly and unopened.

B. Shall have access to any reasonable hour to a telephone where he may speak privately.

C. Shall have access to writing instruments, stationery and postage.

### CONTROL OF FINANCIAL AFFAIRS

13. Each patient and resident has the right to manage his own financial affairs.

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A. If, by written request, the facility manages the patient's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement upon request to the patient or a designated representative.

B. The patient and resident shall have unrestricted access to such accounts at reasonable hours.

### PRIVACY

14. If married, every patient and resident shall enjoy privacy in visits by his spouse and, if both reside in the facility, they shall be allowed to share a room, unless medically contraindicated.

15. Every patient and resident has the right of privacy in their room and the facility's staff shall respect this right by knocking on the door before entering the room.

### GRIEVANCES

16. Every patient and resident has the right, personally, or through others, to present grievances to the Division of Aging, the Ombudsman or to others.

A. There shall be no reprisal, restraint, interference, coercion or discrimination of the patient as a result of such grievance or suggestion.

B. Any alleged violation of any of the provisions of these Rules and Regulations should be presented orally or in writing and forwarded to the attention of the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and the institution to resolve the matter. In any case, the confidentiality of the complainant shall not be revealed without his/her consent.

D. On completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the facility wherein the complaint originated.

E. If the grievance is not resolved at the end of the investigation by the Ombudsman, the grievance findings shall be forwarded to the State Board of Health for appropriate action after obtaining the consent of the complainant.

### PERSONAL CHOICE/PERSONAL PROPERTY

17. A patient or resident shall not be required to perform services for the facility.

18. Every patient and resident shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to have security in their storage and use.

### TRANSFERS/DISCHARGES

19. No patient or resident shall be transferred or discharged from a facility except for the following:

A. For medical reasons;

B. For the patient's own welfare or the welfare of the other patients; and

C. For non-payment of justified charges.

20. If good cause exists, the patient or resident shall be given 30 days advance notice of the proposed action and the reasons for the action and may request an impartial hearing. In emergency situations, such notice need not be given.

21. If a hearing is requested, it shall be held within ten (10) working days of the request. The hearing shall be conducted by the Division of Public Health. Hearing officers could include:

A. Nursing Home Ombudsman;

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- B. A staff member of the advocacy section, Division of Aging;
- C. A physician from the Division of Public Health, not employed by a hospital operated by the Division.
- D. The licensure program director for the type of home involved.

The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

22. If the hearing determines in favor of the patient, the home shall be instructed to comply. If the home refuses to comply, the matter will be referred to the Attorney General's Office to see if further action is called for or permissible under the law.

#### DEVOLUTION OF RIGHTS

Where consistent with the above rights, all rights, particularly as they pertain to a patient adjudicated incompetent, a patient determined to be medically incompetent by his attending physician or a patient unable to communicate, shall devolve to that patient's next of kin, guardian, representative, sponsoring agency or representative payee (except where the facility is the representative payee).

#### NOTICE AWARENESS OF RIGHTS

- I. These provisions shall be posted conspicuously in a public place in each facility.
- II. Copies are to be furnished to the patient or resident upon admission and to all current patients and residents and next of kin, guardian, representative, sponsoring agency or to representative payee.
- III. Receipts for the statement signed by the above parties shall be retained in the facility's files.

Revised May 27, 1982

### **District of Columbia**

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#### **3211 NURSING PERSONNEL**

**3211.1** Sufficient nursing time shall be given to each resident to ensure that the resident receives the following:

- (a) Treatments, medications, diet and nutritional supplements and fluids as prescribed, and rehabilitative nursing care as needed;
- (b) Proper care to minimize pressure ulcers and contractures and to promote the healing of ulcers;
- (c) Assistance in daily personal grooming so that the resident is comfortable, clean, and neat as evidenced by freedom from body odor, cleaned and trimmed nails, and clean, neat and well-groomed hair;
- (d) Protection from accident, injury, and infection;
- (e) Encouragement, assistance, and training in self-care and group activities;
- (f) Encouragement and assistance to:
  - (1) Get out of bed and dress or be dressed in his or her own clothing, and shoes or slippers, which shall be clean and in good repair;
  - (2) Use the dining room if he or she is able; and
  - (3) Participate in meaningful social and recreational activities;
- (g) Prompt, unhurried assistance if he or she requires or requests help with eating;
- (h) Prescribed adaptive self-help devices to assist him or her in eating independently;

## State Regulations pertaining to category\_resident\_rights DC

- (i) Assistance, if needed, with daily hygiene, including oral care; and
- (j) Prompt response to an activated call bell or call for help.

3211.2 Each facility shall have at least the following employees:

- (a) At least one (1) registered nurse on a twenty-four (24) hour basis, seven (7) days a week;
- (b) Twenty-four (24) hour licensed nursing staff sufficient to meet nursing needs of all residents;
- (c) At least one practical or registered nurse, serving as charge nurse, on each unit at all times; and
- (d) A minimum of two (2) nursing employees per nursing unit, per shift.

3211.3 To meet the requirements of subsection 3211.2, facilities of thirty (30) licensed occupied beds or more shall not include the Director of Nursing Services or any other nursing supervisory employee who is not providing direct resident care.

3211.4 Weekly time schedules shall be maintained and indicate the number and classifications of nursing personnel, including relief personnel who work on each unit for each tour of duty.

3211.5 Nursing personnel, licensed practical nurses, nurse aides, orderlies, and ward clerks shall be assigned duties consistent with their education and experience and based on the characteristics of the patient load.

3211.6 A facility shall not employ an individual as a nurse aide who has been employed as a nurse aide for six (6) of the immediately preceding twelve (12) months and who has not completed a training and competency evaluation program approved by the District.

3211.7 The facility shall provide regular performance review and regular in-service education to ensure that individuals employed as nurse aides are competent to perform services as nurse aides.

3211.8 The facility shall ensure that nurse aides are competent in those skills necessary to care for residents' needs, as identified in residents' individualized assessments and in the plans of care.

### **3231 MEDICAL RECORDS**

3231.13 The facility shall permit each resident to inspect his or her medical records on request.

3219.4 The curriculum for regularly scheduled in-service education programs for food service employees may include, but not be limited to, the following:

- (a) Disaster and emergency procedures;
- (b) Infection control;
- (c) Safety and accident prevention;
- (d) Therapeutic diets;
- (e) Food handling;
- (f) Personal hygiene;
- (g) Residents' rights; and
- (h) Psychological aspects of aging.

### **3229 SOCIAL SERVICES**

(g) Annual in-service training to other staff of the facility on subjects including, but not limited to, resident's rights, psychosocial aspects of aging and confidentiality.

### **3232 INCIDENT REPORTING**

3232.1 Each facility shall maintain and keep for three (3) years, from the date of the incident, summaries and analyses of unusual incidents within the facility or on the premises with regard to a resident, visitor or employee, including but not limited to accidents, injuries, drug errors, abuse, neglect and misappropriation of resident funds.

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3232.2 A summary and analysis of each incident shall be completed immediately and reviewed within forty-eight (48) hours of the incident by the Medical Director or the Director of Nursing and shall include the following:

- (a) The date, time and description of the incident;
- (b) The name of the witnesses;
- (c) The statement of the victim;
- (d) A statement indicating whether there is a pattern of occurrence; and
- (e) A description of the corrective action taken.

3232.3 Summaries and analyses of incidents shall be reviewed at least monthly by the Administrator or designee in order to identify and correct health and safety hazards and patterns of occurrence.

3232.4 Each incident shall be documented in the resident's record and reported to the licensing agency within forty-eight (48) hours of occurrence, except that incidents and accidents that result in harm to a resident shall be reported to the licensing agency within eight (8) hours of occurrence.

3232.5 Incidents of abuse or neglect resulting in injury to a resident, or incidents of misappropriation of a resident's funds, shall be reported immediately to the appropriate agencies, including the Department of Health, the Metropolitan Police Department, the Long-Term Care Ombudsman and Adult Protective Services.

**3233 GRIEVANCES**

3233.1 Each facility shall provide each resident, or Resident's Representative, an opportunity to file a grievance with the Administrator, either orally or in writing, concerning any aspect of the resident's care, treatment or living conditions at the facility.

3233.2 Each facility shall provide each resident a written form on which a grievance may be filed, and an opportunity to file a copy of the grievance with the Director.

3233.3 If a grievance is filed orally, the Administrator shall ensure that the grievance is immediately reduced to writing and sets forth the name of the resident, date and time of the grievance, and the specific details of the grievance. The facility shall ensure that the resident has an opportunity to review the grievance as recorded and to file a copy thereof with the Director.

3233.4 The Administrator or designee of each facility shall review each grievance filed within seventy-two (72) hours of its filing and shall respond in writing to the resident or the Resident's Representative within five (5) business days.

3233.5 Each facility shall use its best efforts to resolve each grievance as soon as practicable, and shall report to the resident and the Resident's Representative on the status of the resolution of the grievance at least every thirty (30) days.

3233.6 Facility records on grievances shall be maintained by the facility for at least three (3) years after the date of filing and shall be available to the Director.

**Florida**

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400.428 Resident bill of rights.—

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility.

Every resident of a facility shall have the right to:

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- (a) Live in a safe and decent living environment, free from abuse and neglect.
- (b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.
- (c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.
- (d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.
- (e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.
- (f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. [400.427](#).
- (g) Share a room with his or her spouse if both are residents of the facility.
- (h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.
- (i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.
- (j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.
- (k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.
- (l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.
- (2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline and, when applicable, the Advocacy Center for Persons with Disabilities, Inc.,

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and the Florida local advocacy council, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the local ombudsman council, central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

(3)(a) The agency shall conduct a survey to determine general compliance with facility standards and compliance with residents' rights as a prerequisite to initial licensure or licensure renewal.

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area in which the facility is located to discuss residents' experiences within the facility.

(c) During any calendar year in which no survey is conducted, the agency shall conduct at least one monitoring visit of each facility cited in the previous year for a class I or class II violation, or more than three uncorrected class III violations.

(d) The agency may conduct periodic follow-up inspections as necessary to monitor the compliance of facilities with a history of any class I, class II, or class III violations that threaten the health, safety, or security of residents.

(e) The agency may conduct complaint investigations as warranted to investigate any allegations of noncompliance with requirements required under this part or rules adopted under this part.

(4) The facility shall not hamper or prevent residents from exercising their rights as specified in this section.

(5) No facility or employee of a facility may serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing, inside or outside the facility.

(c) Files a civil action alleging a violation of the provisions of this part or notifies a state attorney or the Attorney General of a possible violation of such provisions.

(6) Any facility which terminates the residency of an individual who participated in activities specified in subsection (5) shall show good cause in a court of competent jurisdiction.

(7) Any person who submits or reports a complaint concerning a suspected violation of the provisions of this part or concerning services and conditions in facilities, or who testifies in any administrative or judicial proceeding arising from such a complaint, shall have immunity from any civil or criminal liability therefor, unless such person has acted in bad faith or with malicious purpose or the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

History.--ss. 12, 31, ch. 80-198; s. 2, ch. 81-318; ss. 55, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 65, ch. 91-221; s. 19, ch. 91-263; ss. 23, 38, 39, ch. 93-216; s. 778, ch. 95-148; s. 11, ch. 95-418; s. 17, ch. 98-80; s. 20, ch. 2000-263; ss. 76, 143, ch. 2000-349; s. 63, ch. 2000-367; s. 38, ch. 2001-45.

400.022 Residents' rights.--

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents



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in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ombudsman council; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident. The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also

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includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, 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 as follows:

1. The facility must establish and maintain a system that ensures a full, 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 accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.

4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in s. 400.162(6).

5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social

Security Act.

(i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related

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charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

(j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law.

When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of s. 119.07(1).

(n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by

a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision

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or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility. (q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for

any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline where complaints may be lodged.

(3) Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of s. 400.102. In order to determine whether the licensee is adequately protecting residents' rights, the annual inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located.

(4) Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability there for, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

History.--s. 8, ch. 76-201; s. 1, ch. 77-174; ss. 1, 9, ch. 79-268; ss. 2, 18, ch. 80-186; s. 2, ch. 81-318; ss. 11, 19, ch. 82-148; ss. 5, 79, 83, ch. 83-181; s. 1, ch. 84-144; s. 15, ch. 90-347; s. 30, ch. 93-177; ss. 3, 49, ch. 93-217; s. 764, ch. 95-148; s. 226, ch. 96-406; s. 118, ch. 99-8; s. 5, ch. 99-394; ss. 70, 137, ch. 2000-349; s. 57, ch. 2000-367; s. 33, ch. 2001-62.

400.023 Civil enforcement.—

(1) Any resident whose rights as specified in this part are violated shall have a cause of action. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall be required to elect either survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s.

768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any violation of the rights of a resident or for negligence. Any resident who prevails in seeking injunctive relief or a claim for an administrative remedy

is entitled to recover the costs of the action, and a reasonable attorney's fee assessed against the defendant not to exceed \$25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought together with a request for an injunction or administrative relief or as a separate action, except as provided under s. 768.79 or the Florida Rules of Civil Procedure. Sections 400.023-400.0238 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022. This section does not preclude theories of recovery not arising out of negligence or s. 400.022 which are available to a resident or to the agency. The provisions of chapter 766 do not apply to any cause of action brought under ss. 400.023-400.0238.

(2) In any claim brought pursuant to this part alleging a violation of resident's rights or negligence causing injury to or the death of a resident, the claimant shall have the burden of proving, by a preponderance of the evidence, that:

(a) The defendant owed a duty to the resident;

(b) The defendant breached the duty to the resident;

(c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and

(d) The resident sustained loss, injury, death, or damage as a result of the breach. Nothing in this part shall be interpreted to create strict liability. A violation of the rights set forth in s. 400.022 or in any other standard or guidelines specified in this part or in any applicable administrative standard or guidelines of this state or a federal regulatory agency shall be evidence of negligence but shall not be considered negligence per se.

(3) In any claim brought pursuant to this section, a licensee, person, or entity shall have a duty to exercise reasonable care. Reasonable care is that degree of care which a reasonably careful licensee, person, or entity would use under like circumstances.

(4) In any claim for resident's rights violation or negligence by a nurse licensed under part I of chapter 464, such nurse shall have the duty to exercise care consistent with the prevailing professional standard of care for a nurse. The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.

(5) A licensee shall not be liable for the medical negligence of any physician rendering care or treatment to the resident except for the administrative services of a medical director as required in this part. Nothing in this subsection shall be construed to protect a licensee, person, or entity from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

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(6) The resident or the resident's legal representative shall serve a copy of any complaint alleging in whole or in part a violation of any rights specified in this part to the Agency for Health Care Administration at the time of filing the initial complaint with the clerk of the court for the county in which the action is pursued. The requirement of providing a copy of the complaint to the agency does not impair the resident's legal rights or ability to seek relief for his or her claim.

(7) An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.--ss. 3, 18, ch. 80-186; s. 2, ch. 81-318; ss. 6, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 1, ch. 86-79; s. 30, ch. 93-177; ss. 4, 49, ch. 93-217; s. 765, ch. 95-148; s. 30, ch. 99-225; s. 4, ch. 2001-45; s. 34, ch. 2001-62.

400.0233 Presuit notice; investigation; notification of violation of resident's rights or alleged negligence; claims evaluation procedure; informal discovery; review; settlement offer; mediation.--

(1) As used in this section, the term:

(a) "Claim for resident's rights violation or negligence" means a negligence claim alleging injury to or the death of a resident arising out of an asserted violation of the rights of a resident under s. 400.022 or an asserted deviation from the applicable standard of care.

(b) "Insurer" means any self-insurer authorized under s. 627.357, liability insurance carrier, joint underwriting association, or uninsured prospective defendant.

(2) Prior to filing a claim for a violation of a resident's rights or a claim for negligence, a claimant alleging injury to or the death of a resident shall notify each prospective defendant by certified mail, return receipt requested, of an asserted violation of a resident's rights provided in s. 400.022 or deviation from the standard of care. Such notification shall include an identification of the rights the prospective defendant has violated and the negligence alleged to have caused the incident or incidents and a brief description of the injuries sustained by the residents which are reasonably identifiable at the time of notice. The notice shall contain a certificate of counsel that counsel's reasonable investigation gave rise to a good faith belief that grounds exist for an action against each prospective defendant.

(3)(a) No suit may be filed for a period of 75 days after notice is mailed to any prospective defendant. During the 75-day period, the prospective defendants or their insurers shall conduct an evaluation of the claim to determine the liability of each defendant and to evaluate the damages of the claimants. Each defendant or insurer of the defendant shall have a procedure for the prompt evaluation of claims during the 75-day period. The procedure shall include one or more of the following:

1. Internal review by a duly qualified facility risk manager or claims adjuster;
2. Internal review by counsel for each prospective defendant;
3. A quality assurance committee authorized under any applicable state or federal statutes or regulations; or
4. Any other similar procedure that fairly and promptly evaluates the claims.

Each defendant or insurer of the defendant shall evaluate the claim in good faith.

(b) At or before the end of the 75 days, the defendant or insurer of the defendant shall provide the claimant with a written response:

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1. Rejecting the claim; or
2. Making a settlement offer.

(c) The response shall be delivered to the claimant if not represented by counsel or to the claimant's attorney, by certified mail, return receipt requested. Failure of the prospective defendant or insurer of the defendant to reply to the notice within 75 days after receipt shall be deemed a rejection of the claim for purposes of this section.

(4) The notification of a violation of a resident's rights or alleged negligence shall be served within the applicable statute of limitations period; however, during the 75-day period, the statute of limitations is tolled as to all prospective defendants. Upon stipulation by the parties, the 75-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving written notice by certified mail, return receipt requested, of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

(5) No statement, discussion, written document, report, or other work product generated by presuit claims evaluation procedures under this section is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit claims evaluation procedure. Any licensed physician or registered nurse may be retained by either party to provide an opinion regarding the reasonable basis of the claim. The presuit opinions of the expert are not discoverable or admissible in any civil action for any purpose by the opposing party.

(6) Upon receipt by a prospective defendant of a notice of claim, the parties shall make discoverable information available without formal discovery as provided in subsection

(7) Informal discovery may be used by a party to obtain unsworn statements and the production of documents or things as follows:

(a) Unsworn statements.--Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of claims evaluation and are not discoverable or admissible in any civil action for any purpose by any party. A party seeking to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

(b) Documents or things.--Any party may request discovery of relevant documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce relevant and discoverable documents or things within that party's possession or control, if in good faith it can reasonably be done within the timeframe of the claims evaluation process.

(8) Each request for and notice concerning informal discovery pursuant to this section must be in writing, and a copy thereof must be sent to all parties. Such a request or notice



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must bear a certificate of service identifying the name and address of the person to whom the request or notice is served, the date of the request or notice, and the manner of service thereof.

(9) If a prospective defendant makes a written settlement offer, the claimant shall have 15 days from the date of receipt to accept the offer. An offer shall be deemed rejected unless accepted by delivery of a written notice of acceptance.

(10) To the extent not inconsistent with this part, the provisions of the Florida Mediation Code, Florida Rules of Civil Procedure, shall be applicable to such proceedings.

(11) Within 30 days after the claimant's receipt of the defendant's response to the claim, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with the mediation rules of practice and procedures adopted by the Supreme Court. Upon stipulation of the parties, this 30-day period may be extended and the statute of limitations is tolled during the mediation and any such extension. At the conclusion of mediation, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

History.--s. 5, ch. 2001-45.

400.0234 Availability of facility records for investigation of resident's rights violations and defenses; penalty.--

(1) Failure to provide complete copies of a resident's records, including, but not limited to, all medical records and the resident's chart, within the control or possession of the facility in accordance with s. 400.145 shall constitute evidence of failure of that party to comply with good faith discovery requirements and shall waive the good faith certificate and presuit notice requirements under this part by the requesting party.

(2) No facility shall be held liable for any civil damages as a result of complying with this section.

History.--s. 6, ch. 2001-45.

400.0235 Certain provisions not applicable to actions under this part.--An action under this part for a violation of rights or negligence recognized under this part is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.--s. 7, ch. 2001-45.

400.0236 Statute of limitations.--

(1) Any action for damages brought under this part shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued.

(2) In those actions covered by this subsection in which it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event for more than 6 years from the date the incident giving rise to the injury occurred.

(3) This section shall apply to causes of action that have accrued prior to the effective date of this section; however, any such cause of action that would not have been barred under prior law may be brought within the time allowed by prior law or within 2 years

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after the effective date of this section, whichever is earlier, and will be barred thereafter. In actions where it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event more than 4 years from the effective date of this section. History.--s. 8, ch. 2001-45.

400.0237 Punitive damages; pleading; burden of proof.--

(1) In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

(4) The plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The "greater weight of the evidence" burden of proof applies to a determination of the amount of damages.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.--s. 9, ch. 2001-45.

400.0238 Punitive damages; limitation.--

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$1 million.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of \$4 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(e) In any case in which the findings of fact support an award of punitive damages pursuant to paragraph (b) or paragraph (c), the clerk of the court shall refer the case to the appropriate law enforcement agencies, to the state attorney in the circuit where the long-term care facility that is the subject of the underlying civil cause of action is located, and, for multijurisdictional facility owners, to the Office of the Statewide Prosecutor; and such agencies, state attorney, or Office of the Statewide Prosecutor shall initiate a criminal investigation into the conduct giving rise to the award of punitive damages. All findings by the trier of fact which support an award of punitive damages under this paragraph shall be admissible as evidence in any subsequent civil or criminal proceeding relating to the acts giving rise to the award of punitive damages under this paragraph.

(2) The claimant's attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than punitive damages.

(3) The jury may neither be instructed nor informed as to the provisions of this section.

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(b) A settlement agreement entered into between the original parties to the action after a verdict has been returned must provide a proportionate share payable to the Quality of Long-Term Care Facility Improvement Trust Fund specified herein. For purposes of this paragraph, a proportionate share is a 50-percent share of that percentage of the settlement amount which the punitive damages portion of the verdict bore to the total of the compensatory and punitive damages in the verdict.

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(c) The Department of Financial Services shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this subsection.

(d) If the full amount of punitive damages awarded cannot be collected, the claimant and the other recipient designated pursuant to this subsection are each entitled to a proportionate share of the punitive damages collected.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.--s. 10, ch. 2001-45; s. 415, ch. 2003-261.

400.1183 Resident grievance procedures.--

(1) Every nursing home must have a grievance procedure available to its residents and their families. The grievance procedure must include:

(a) An explanation of how to pursue redress of a grievance.

(b) The names, job titles, and telephone numbers of the employees responsible for implementing the facility's grievance procedure. The list must include the address and the toll-free telephone numbers of the ombudsman and the agency.

(c) A simple description of the process through which a resident may, at any time, contact the toll-free telephone hotline of the ombudsman or the agency to report the unresolved grievance.

(d) A procedure for providing assistance to residents who cannot prepare a written grievance without help.

(2) Each facility shall maintain records of all grievances and shall report annually to the agency the total number of grievances handled, a categorization of the cases underlying the grievances, and the final disposition of the grievances.

(3) Each facility must respond to the grievance within a reasonable time after its submission.

(4) The agency may investigate any grievance at any time.

(5) The agency may impose an administrative fine, in accordance with s. 400.121, against a nursing home facility for noncompliance with this section.

History.--s. 19, ch. 2001-45.

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290-5-39-.02 Administration.

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

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

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- (3) Each facility must provide a written explanation of the rights, grievance procedures, and enforcement procedures to each resident and guardian, or representative if the resident does not have a guardian.
- (4) A facility must bill for all charges at least once each month, unless otherwise agreed to in writing by the facility and the resident or guardian. Each bill must itemize charges for daily or monthly rates and for all extra charges.
- (5) Each facility must post in the most frequented and conspicuous places, accessible to all residents, notices of residents' rights prepared by the Department.
- (6) Copies of these rules and regulations shall be kept by the facility and shall be available for examination by any resident, guardian or representative.
- (7) Upon the request of the resident, guardian or representative, the facility shall provide such person making the request with the name, address and telephone number of the resident's physician.
- (8) Each resident or guardian shall be entitled to have reported promptly to persons of the resident's choice significant changes in the resident's health status. A resident or guardian who desires that family members or other persons of their choice be notified in the case of significant changes in the resident's health status shall either:
  - (a) Notify the administrator in advance that he desires that certain persons be notified in the event of any significant change in the resident's health status, with such notification being made part of the resident's personal file; or
  - (b) If such advance notification has not been given, a resident or guardian may inform the physician or administrator at any time that he desires that certain persons be notified of significant current changes. In the case of a resident unable to communicate who does not have a legally appointed guardian, the physician or administrator shall immediately contact family members or other interested persons concerning any significant change in the resident's health status.
- (9) Upon a resident's request or a request of his or her guardian or representative, the facility must provide him or her with a current list of all services and charges. Current charges must be posted in the most frequented places, conspicuous, and accessible to all residents.
- (10) The facility must inform each resident in writing, at least 30 days in advance of the effective date of any changes in the rates or the services that these rates cover.
- (11) Each resident or his guardian or authorized representative shall be entitled to inspect and receive a copy of the resident's non-medical records kept by the facility. The facility may charge a reasonable fee for duplication, not to exceed actual cost.

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

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

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

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

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the resident's guardian or representative if there is no guardian. Such written acknowledgement shall be kept in the resident's file.

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

- (a) The basic daily or monthly rate of the facility for the level of care to be received by the resident;
- (b) A list of the services of the facility. Such list must show which services are offered as a part of the daily rate and which services are offered on an as-needed basis along with the related charges for such services. Such list must also show which services are not covered under Medicare or Medicaid programs and for which there are extra charges;
- (c) A statement disclosing the facility's name and business address and the administrator's name and business address. The statement should also disclose that upon request at any time during normal business hours, a resident or a person applying to be a resident must be given a current copy of the annual disclosure statement filed with the Department of Medical Assistance.
- (d) Notice of right of access to the written policies and procedures of the facility adopted pursuant to .02(1) of these rules and regulations during normal business hours;
- (e) The right to select at admission or to change at any time, the pharmacy or pharmacist of the resident's choice for those pharmaceutical supplies and services not provided as a part of the facility's basic rate. If the facility uses a specific type of unit dose drug system, any pharmacy or pharmacist chosen by the resident must be able to provide pharmaceuticals under such a system. Such notice at the time of admission shall also include a list of which pharmaceutical supplies and services are not provided by the facility.

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

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

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

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

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

- (a) All residents legally eligible to vote must be permitted to vote in all primary, special and general elections and in referenda. If requested by the resident, the facility must assist in obtaining voter registration forms, applications for absentee ballots and in obtaining such ballots and assist the resident in meeting all other legal requirements in order to be able to vote. The facility shall not interfere with nor attempt to influence the actual casting of the resident's vote.
- (b) All residents must be free to practice their religion and religious beliefs as they choose. All residents must also be free from the imposition, by the facility or any of its employees, of any religious beliefs and practices if they so choose.
- (c) All residents must be free to associate, meet and communicate in private with persons of the resident's choice. Residents must be permitted to participate in social, familial, religious, and community group activities of their choice either on or off of the facility

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grounds, provided that if such event occurs off the facility grounds, the right to leave the facility shall be subject to .10 of these rules and regulations.

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

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

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

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

(h) Visitors must be granted access to residents during normal visiting hours provided that each visitor entering a facility promptly discloses his presence and identifies himself to the person in charge and enters the immediate living quarters of a resident only after identifying himself and receiving permission to enter. Place of visitation shall be any place of the resident's choice so long as it does not disrupt the normal operation of the facility or disturb the other residents. Residents may terminate visits at any time. The person in charge may refuse a visitor access or require such a visitor to leave only if:

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

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

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

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

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

290-5-39-.05 Privacy.

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

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

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

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

by mail, telephone and visit. The administrator shall provide that mail is received and mailed on regular postal days. Public telephones must be available and accessible to residents, including those in wheelchairs, and must permit and be conducive to private conversation. Residents shall have the right to refuse any telephone call or correspondence. Such refusal shall be documented in the resident's file.

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

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

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

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

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

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

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

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

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

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



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- (a) The resident or guardian must authorize the facility in writing to help in the management of all or the part specified of the resident's finances. Such written authorization must be kept in the resident's file;
- (b) The facility may expend funds for the resident only at the specific written or oral request of the resident or guardian and only for the purpose designated by the resident or guardian.
- (c) The resident or his guardian shall be given any portion or all of the resident's funds upon request of the resident or guardian. The resident or guardian may authorize in writing a representative to withdraw funds from the resident's account. Such authorization must contain a specific amount permitted to be withdrawn and the date such authorization expires.
- (d) A current written record of all financial arrangements and transactions made to or on behalf of the resident must be maintained by the facility either individually in each resident's file or individually in a separate file for all transactions made to or in behalf of each resident. A resident or guardian shall be permitted to inspect and duplicate at cost such current record for that resident.
- (e) The facility shall issue to each resident or guardian a written quarterly statement, and prior to any change in ownership of the facility, showing the current balance and an itemized listing of all transactions made to or on behalf of the resident.
- (6) Funds received from a resident on his behalf may be deposited in an interest bearing account. All funds not needed for the ordinary use by a resident on a daily basis above \$150.00 per resident must be kept in an account insured by agencies of or corporations chartered by the state or federal government. Such account must clearly show that the facility has only a fiduciary interest in the funds in such account. All interest earned upon such account must accrue to the resident, with each resident being credited with the portion of the interest attributable to his portion of the account.
- (7) To guarantee the security of residents' funds, each facility shall obtain an irrevocable letter of credit from a bank or savings and loan association, as defined in Code Section 7-1-4, or purchase a surety bond at least equal to the amount of all funds in the residents' accounts maintained by the facility.

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

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

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

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

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

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

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

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

(c) Each resident or guardian shall be entitled to choose or change at any time the resident's physician(s). A physician so chosen shall inform the resident in advance whether or not the physician's fees can be paid for by Medicaid, Medicare, or from any other public or private benefits and agree to and provide documentation to any third party payor as required by law, regulations or contract.

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

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

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

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

February 25, 1982. 290-5-39-.08 Refusal of Medical Treatment, Dietary Restrictions and Medications.

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

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

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shall the possible consequences of the refusal, and the resident's physician shall be notified as soon as practical.

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

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

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

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

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann 88-1914B, 1924B). Administrative History. Original Rule entitled "Refusal of Medical Treatment, Dietary Restrictions and Medications" was filed on February 5, 1982; effective February 25, 1982.

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

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

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

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

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

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

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

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

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

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

290-5-39-.10 Temporary Suspension of Rights.

Convenience to the facility shall not justify the suspension of any rights to individual residents.

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

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

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

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

(c) A temporary suspension of rights may be authorized for a maximum of 65 days for residents of intermediate care homes and for 35 days for residents of nursing homes. In

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no event shall the suspension of such right or rights be authorized for a period longer than actual need. Any additional period shall be considered a new suspension, for which all provisions and requirements of this section shall be met.

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

290-5-39-.11 Transfer and Discharge.

(1) In an emergency situation where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve, the facility may involuntarily transfer the resident to another health facility. The person in charge shall document in the resident's file the reasons for such emergency transfer and shall immediately inform the resident, guardian and other persons of the resident's choice regarding such transfer and the place where the resident is to be transferred.

(2) In all other situations an involuntary transfer or discharge must be in accordance with any of the following reasons and procedures and only after all other reasonable alternatives to transfer have been exhausted:

(a) The resident's physician or, if unavailable, another physician determines that failure to transfer the resident will result in injury or illness to the resident or others. The resident's physician shall be kept informed of actions taken. The attending physician must document that determination in the resident's record. If the basis for the transfer or discharge is the threat of injury or illness to the resident only, the resident cannot be transferred or discharged unless the physician documents in the resident's medical record that such transfer or discharge is not expected to endanger the resident to a greater extent than remaining in the facility; or

(b) The facility does not participate in, or voluntarily or involuntarily ceases to operate or participate in the program which reimburses for the resident's care. In the event that a facility voluntarily or involuntarily ceases to operate or participate in the program which reimburses for the resident's care and proposes to transfer or discharge a resident because of that fact, the facility must cooperate fully with and take all reasonable directives from the State Medicaid Agency and the Health Care Financing Administration Regional Office in the implementation of any transfer planning and transfer counseling conducted by these agencies; or

(c) Nonpayment of allowable fees has occurred. When a resident has been converted from full or private pay status to Medicaid eligibility due to exhaustion of personal financial resources, nonpayment of allowable fees has not occurred so long as the facility participates in the Medicaid program. Similarly, conversion from Medicare/Medicaid eligibility status does not constitute nonpayment of allowable fees; or

(d) The findings of a Medicare or Medicaid medical necessity review determine that the resident no longer requires the level of care presently being provided, subject to the right of the resident to any appeal procedure available to challenge the determination of medical necessity review. Where space permits, the resident must be given the option of staying at the facility, if the facility is certified to provide the new level of care.

(3) The facility must give written notice to the resident, guardian or representative, if there is no guardian, and the resident's physician at least 30 days before any proposed transfer or discharge is made in accordance with subsections (2)(a), (2)(b), or (2)(c) of this rule. The written notice must contain the following information: the reasons for the

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proposed transfer or discharge; the effective date of the proposed transfer or discharge; the location or other facility to which the facility proposes to transfer or discharge the resident; and notice of the right to a hearing pursuant to the Georgia Administrative Procedure Act and Section .15 of these rules and regulations, and of the right to representation by legal counsel. If the resident so desires, the facility shall also send a copy of such notice to the community ombudsman, or state ombudsman if there is no community ombudsman.

(4) If two residents are married and the facility proposes to transfer one spouse to another facility at a similar level of care, notice must be given to the other spouse of the right to be transferred to the same facility if the other spouse makes a request to that facility in writing. Married residents must be transferred on the same day, pending availability of accommodations. If also available, that facility shall place both residents in the same room if the residents so desire.

(5) In the event of an involuntary transfer pursuant to subsections (2)(a), (2)(b), or (2)(c) of this rule, the facility must assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge by developing a plan designed to minimize any transfer stress to the resident. Such plan shall include counseling the resident, guardian, or representative, regarding available community resources and informing the appropriate state or social service organizations, including, but not limited to, the community or state long-term care ombudsman and assisting in arranging for the transfer.

(6) In the event that the facility proposes an involuntary transfer of the resident to another bed in the same facility, the resident and guardian shall receive 15 days written notice prior to such change.

(7) A resident shall be voluntarily discharged from a facility when the resident or guardian gives the person in charge notice of the resident's intention to be discharged and the expected date of departure. In the case of a resident without a guardian, the facility may not require that the resident be "signed out" or authorized to be discharged by any person or agency other than the resident. Notice of the resident's or guardian's intention to be discharged and the expected and actual dates of departure shall be documented in the resident's record. If the resident appears to be capable of living independently of the facility, upon such discharge, the facility is relieved of any further responsibility for the resident's care, safety, or well-being.

(8) If a resident being voluntarily discharged into the community appears to be incapable of living independently of the facility, in addition to the requirements under section (7) of this rule, the facility shall also do the following:

(a) Notify the County Director of the Department of Family and Children Services in order to obtain social or protective services for the resident immediately after the facility receives notice of the resident's intention to be discharged;

(b) Document such notice to the county director of the Department of Family and Children Services in the resident's record along with the resident's notice of intention to be discharged and the expected and actual dates of departure;

(c) Upon notice to the county director of the Department of Family and Children Services and upon actual discharge of the resident, the facility shall be relieved of any further responsibility for the resident's care, safety, or well-being.

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(9) Each resident transferred from a facility to a hospital, other health care facility, or trial alternative living placement shall have the right to return to the facility immediately upon discharge from the hospital, other health care facility or upon termination of the trial living placement, provided that the resident has continued to pay the facility or payment on behalf of the resident by another person or agency has been provided for the period of the resident's absence. If payment is provided for the period of absence, the facility shall continue the same room assignment for such resident. In cases of nonpayment to the facility during such absence, a resident who requests to return to a facility from a hospital shall be admitted to the facility to the first bed available, with priority over any existing waiting list.

(10) Whenever allowed by the resident's health condition, a resident shall be provided treatment and care, rehabilitative services, and assistance by the facility to prepare the resident to return to the resident's home or other living situation less restrictive than the facility. Upon the request of the resident, guardian, or representative, the facility shall provide him with information regarding available resources and inform him of the appropriate state or social service organizations.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1903B, 1917B, 1924B).

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

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

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

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

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

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

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

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

290-5-39-.13 Nondiscrimination.

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

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

(b) The facility cannot provide adequate and appropriate care, treatment, and services to the resident or applicant due to such disease or disability, provided such exclusion is not contrary to federal or state law and regulation prohibiting such discrimination nor

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contrary to federal or state law or regulation requiring that care must be provided if the facility participates in a financial program requiring such admittance or continued residency.

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

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

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

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

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

290-5-39-.14 Grievance Procedure.

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

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

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

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

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

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



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

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

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

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

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

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

(i) A resident, guardian or representative who elects not to proceed under this section shall not be prohibited from proceeding under .15 or .16 of these rules and regulations.

Nothing in these rules and regulations is meant to modify or diminish any complaint procedure set up or in operation pursuant to Ga. Code Ann., Chapter 88-19A.

Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1903B, 1921B, 1924B).

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

290-5-39-.15 Administrative Hearing.

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

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

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

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

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

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

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

1. The issues to be decided;
2. A summary of any actions already taken;
3. The contentions of the parties;
4. The findings of the hearing officer including whether a violation has occurred;
5. If a violation has occurred, the corrective action to be taken, and the date by which such corrective action shall be taken; and
6. The right to appeal the decision to the Superior Court of the county in which the facility is located or as provided otherwise by law.

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

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

290-5-39-.16 Enforcement.

Any person or persons aggrieved because a long-term care facility has violated or failed to provide any rights granted under Ga. Code Ann., Chapter 88-19B or these rules and regulations shall have a cause of action against such facility for damages and such other relief as the court having jurisdiction of the action deems proper. No person shall be prohibited from maintaining such an action for failure to exhaust any rights to administrative or other relief granted under Ga. Code Ann., Chapter 88-19B or these rules

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and regulations. In addition to all other penalties or remedies that may be imposed by these rules and regulations, or any state or federal law, the Department is authorized to impose civil penalties as follows:

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

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

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

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

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

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

(e) All civil penalties recovered by the Department shall be paid into the State Treasury. Authority Ga. L. 1981, pp. 149-167 (Ga. Code Ann. 88-1923B, 1924B). Administrative History. Original Rule entitled "Enforcement" was filed on February 5, 1982; effective

### **Hawaii**

Downloaded 04.03.07

§11-94-26 Patients' rights.

(a) Written policies regarding the rights and responsibilities of patients during their stay in the facility shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. The facility's policies and procedures shall provide that each individual admitted to the facility shall:

(1) Be fully informed, as evidenced by the patient's written, signed acknowledgment prior to or at the time of admission and during stay, of these rights and of all rules governing patient conduct.

(2) Be fully informed, prior to or at the time of admission and during stay, of services available in or through the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate.

(3) Be advised that patients have a right to have their medical condition and treatment discussed with them by a physician of their choice, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of their medical treatment and to refuse to participate in experimental research.

(4) Have the right to refuse treatment after being informed of the medical benefits of treatment and the consequences of refusal.

(5) Be transferred or discharged only for medical reasons, or for their welfare or that of other patients, or for nonpayment for their stay, and be given reasonable advance notice to ensure orderly transfer or discharge; such actions shall be documented in their health record.

(6) Be encouraged and assisted throughout their period of stay to exercise their rights as patients, and to this extent voice grievances and recommend changes in policies and services to the facility's staff and outside representatives of their choice free from restraint, interference, coercion, discrimination, or reprisal.

(7) Manage their personal financial affairs. In the event the facility agrees to manage the patient's personal funds, the conditions under which the facility will exercise the responsibility shall be explained to the patient, and shall meet the minimum requirements of section 11-94-24.

§11-94-27

(8) Not be humiliated, harassed, injured or threatened and shall be free from chemical and physical restraints. This does not exclude use of medication for treatment as ordered by a physician. Physical restraints may be used in an emergency, when necessary, to protect the patient from injury to the patient's self or others. In such an event, the patient's physician shall be notified as soon as possible and further orders obtained for care of the patient.

(9) Be entitled to have their personal and medical records kept confidential and subject to release only as provided in section 11-94-22.

- (10) Be treated with consideration, respect and in full recognition of their dignity and individuality, including privacy in treatment and in care.
  - (11) Not to be required to perform services for the facility, its licensee or staff that are not included for therapeutic purposes in their plan of care.
  - (12) Have the right to associate and communicate privately with persons of their choice, and to send and receive their personal mail unopened. At their request to be visited by members of the clergy at any time.
  - (13) Have the right to meet with and participate in activities of social, religious, and community groups at their discretion.
  - (14) Retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other patients.
  - (15) Be assured of privacy for visits. If a married couple are both patients in a facility, they are permitted to share a room.
- (b) The patient or responsible agent shall sign an acknowledgment of understanding which clearly states the policies of the facility with which the patient must comply.  
[Eff. May 3, 1985 ] (Auth: §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

### Idaho

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**03. Patient/Resident Rights and Responsibilities.** The administrator, on behalf of the governing body of the facility, shall establish written policies regarding the rights and responsibilities of patients/residents and responsibility for development of, and adherence to, procedures implementing such policies. (1-1-88)

**a.** These policies and procedures shall be made available to patients/residents, to any guardians, next of kin, sponsoring agency(ies), and to the public. (1-1-88)

**b.** The staff of the facility shall be trained and involved in the implementation of these policies and procedures. (1-1-88)

**c.** These patients'/residents' rights, policies and procedures ensure that, at least, each patient/resident admitted to the facility: (1-1-88)

i. Is fully informed, as evidenced by the patient's/resident's written acknowledgement, prior to or at the time of admission and during his stay, of these rights and of all rules and minimum standards governing patient/ resident conduct and responsibilities. Should the patient/resident be medically or legally unable to understand these rights, the patient's/resident's guardian or responsible person (not an employee of the facility) has been informed on the patient's/resident's behalf; (1-1-88)

ii. Is fully informed, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under Titles XVIII or XIX of the Social Security Act, or not covered by the facility's basic per diem rate; (1-1-88)

iii. Is fully informed, by a physician, of his medical condition unless medically contraindicated (as documented, by a physician, in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research; (1-1-88)

iv. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients/ residents, or for nonpayment for his stay (except as prohibited by Titles XVIII

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or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in his medical record; (1-1-88)

v. Is encouraged and assisted, throughout his period of stay, to exercise his rights as a patient/resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal; (1-1-88)

vi. May manage his personal financial affairs, and should the facility be directed by him, his family, his conservator, or guardian, to maintain a trust account for him, a report as to the status of his account and any expenditures, or access to his trust account records shall be available upon request; (1-1-88)

vii. Is 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 State specified and limited period of time, or when necessary to protect the patient/resident from injury to himself or to others; (1-1-88)

viii. Is assured confidential treatment of his personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in case of his transfer to another health care facility, or as required by law or third-party payment contract; (1-1-88)

ix. Is treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs; (1-1-88)

x. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care; (1-1-88)

xi. May associate and communicate privately with persons of his choice, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician in his medical record); (1-1-88)

xii. May meet with, and participate in activities of social, religious, and community groups at his discretion, unless medically contraindicated (as documented by his physician in his medical record); (1-1-88)

xiii. May retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients/residents, and unless medically contraindicated (as documented by his physician in his medical record); and (1-1-88)

xiv. If married, is assured privacy for visits by his/her spouse; if both are patients/residents in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record). (1-1-88)

**Illinois**

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- a) No resident shall be deprived of any rights, benefits, or privileges guaranteed by law based on their status as a resident of a facility. (Section 2-101 of the Act) (A, B)
- b) A resident shall be permitted to retain and use or wear his personal property in his immediate living quarters, unless deemed medically inappropriate by a physician and so documented in the resident's clinical record. (Section 2-103 of the Act)
- c) If clothing is provided to the resident by the facility it shall be of a proper fit. (Section 2-103 of the Act)
- d) The facility shall provide adequate and convenient storage space for the personal property of the resident. (Section 2-103 of the Act)
- e) The facility shall provide a means of safeguarding small items of value for its residents in their rooms or in any other part of the facility so long as the residents have daily access to such valuables. (Section 2-103 of the Act)
- f) The facility shall make reasonable efforts to prevent loss and theft of residents' property. Those efforts shall be appropriate to the particular facility and may, for example, include, but are not limited to, staff training and monitoring, labeling property, and frequent property inventories. (Section 2-103 of the Act)
- g) The facility shall develop procedures for investigating complaints concerning theft of residents' property and shall promptly investigate all such complaints. (Section 2-103 of the Act)
- h) The facility administrator shall ensure that married residents residing in the same facility be allowed to reside in the same room within the facility unless there is no room available in the facility or it is deemed medically inadvisable by the residents' attending physician and so documented in the residents' medical records. (Section 2-108(e) of the Act)
- i) There shall be no traffic through a resident's room to reach any other area of the building. (B)
- j) Children under 16 years of age who are related to employees or owners of a facility, and who are not themselves employees of the facility, shall be restricted to quarters reserved for family or employee use except during times when such children are part of a group visiting the facility as part of a planned program, or similar activity.
- k) A resident may refuse to perform labor for a facility. (Section 2-113 of the Act)
- l) A resident shall be permitted the free exercise of religion. Upon a resident's request, and if necessary at his expense, the facility administrator shall make arrangements for a resident's attendance at religious services of the resident's choice. However, no religious beliefs or practices, or attendance at religious services, may be imposed upon any resident. (Section 2-109 of the Act)
- m) All facilities shall comply with the "Election Code" (Ill. Rev. Stat. 1991, ch. 46, par. 1-1 et seq.) [10 ILCS 5] as it pertains to absentee voting for residents of licensed long-term care facilities.
- n) The facility shall immediately notify the resident's next of kin, representative and physician of the resident's death or when the resident's death appears to be imminent. (Section 2-208 of the Act)
- o) The facility shall also immediately notify the resident's family, guardian, representative, conservator and any private or public agency financially responsible for the resident's care whenever unusual circumstances such as accidents, sudden illness,

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disease, unexplained absences, extraordinary resident charges, billings, or related administrative matters arise. (B)

p) Where a resident, a resident's representative or a resident's next of kin believes that an emergency exists each of them, collectively or separately, may file a verified petition to the circuit court for the county in which the facility is located for an order placing the facility under the control of a receiver. (Section 3-503 of the Act) As used in Section 3-503 of the Act, "emergency" means a threat to the health, safety or welfare of a resident that the facility is unwilling or unable to correct. (Section 3-501 of the Act)

(Source: Amended at 17 Ill. Reg. 19279, effective October 26, 1993)

Section 300.3220 Medical and Personal Care Program

a) A resident shall be permitted to retain the services of his own personal physician at his own expense under an individual or group plan of health insurance, or under any public or private assistance program providing such coverage. (B) (Section 2-104(a) of the Act)

b) The Department shall not prescribe the course of medical treatment provided to an individual resident by the resident's physician in a facility. (Section 2-104(a) of the Act)

c) All resident shall be permitted to obtain from their own physician or the physician attached to the facility complete and current information concerning his medical diagnosis, treatment and prognosis in terms and language the resident can reasonably be expected to understand. (Section 2-104 of the Act)

d) All resident shall be permitted to participate in the planning of their total care and medical treatment to the extent that his condition permits. (Section 2-104(a) of the Act)

e) No resident shall be subjected to experimental research or treatment without first obtaining his informed, written consent. The conduct of any experimental research or treatment shall be authorized and monitored by an institutional review committee appointed by the administrator of the facility where such research and treatment is conducted. (A, B) (Section 2-104(a) of the Act)

f) All medical treatment and procedures shall be administered as ordered by a physician. All new physician orders shall be reviewed by the facility's Director of nursing or charge nurse designee within 24 hours after such orders have been issued to assure facility compliance with such orders. (Section 2-104(b) of the Act)

g) *Section G relates to pregnancy, which is not addressed in the Federal statutes.*

h) Every resident shall be permitted to refuse medical treatment and to know the consequences of such action, unless such refusal would be harmful to the health and safety of others and such harm is documented by a physician in the resident's clinical record. (B) (Section 2-104(c) of the Act)

i) Inspection and Copying of Records

1) Every resident, resident's guardian, or parent (if the resident is a minor) shall be permitted to inspect and copy all of the resident's clinical and other records concerning the resident's care and maintenance kept by the facility or by the resident's physician. (Section 2-104(c) of the Act)

2) Every resident's representative shall be permitted to inspect and copy the resident's records. A "resident's representative" is a person, other than the owner or agent or employee of a facility who is not related to the resident, designated in writing by a resident to be his representative, or the resident's guardian, or the parent of a minor



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resident for whom no guardian has been appointed. (Sections 1-123 and 2-202(h) of the Act) (B)

j) All residents shall be permitted respect and privacy in their medical and personal care program. Every resident's case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly, and those persons not directly involved in the resident's care must have the resident's permission to be present. (B) (Section 2-105 of the Act)

(Source: Amended at 15 Ill. Reg. 554, effective January 1, 1991)

Section 300.3250 Communication and Visitation

a) Every resident shall be permitted unimpeded, private and uncensored communication of his choice by mail, public telephone or visitation. (Section 2-108(a) of the Act)

b) The facility administrator shall ensure that correspondence is conveniently received and mailed, and that telephones are reasonably accessible. (Section 2-108(a) of the Act)

c) The facility administrator shall ensure that residents may have private visits at any reasonable hour unless such visits are not medically advisable for the resident as documented in the resident's clinical record by the resident's physician. (Section 2-108(a) of the Act)

d) The facility shall allow daily visiting between 10:00 A.M. and 8:00 P.M. These visiting hours shall be posted in plain view of visitors.

e) The facility administrator shall ensure that space for visits is available and that facility personnel knock, except in an emergency, before entering any resident's room. (Section 2-108(c) of the Act)

f) Unimpeded, private and uncensored communication by mail, public telephone, and visitation may be reasonably restricted by a physician only in order to protect the resident or others from harm, harassment or intimidation provided that the reason for any such restriction is placed in the resident's clinical record by the physician and that notice of such restriction shall be given to all residents upon admission. (Section 2-108(d) of the Act)

g) Notwithstanding subsection (f) of this Section, all letters addressed by a resident to the Governor, members of the General Assembly, Attorney General, judges, state's attorneys, officers of the Department, or licensed attorneys at law shall be forwarded at once to the persons to whom they are addressed without examination by facility personnel. Letters in reply from the officials and attorneys mentioned above shall be delivered to the recipient without examination by facility personnel. (Section 2-108(d) of the Act)

h) Any employee or agent of a public agency, any representative of a community legal services program or any member of a community organization shall be permitted access at reasonable hours to any individual resident of any facility, if the purpose of such agency, program or organization includes rendering assistance to residents without charge, but only if there is neither a commercial purpose nor affect to such access and if the purpose is to do any other the following:

- 1) Visit, talk with and make personal, social, and legal services available to all residents;
- 2) Inform residents of their rights and entitlements and their corresponding obligations, under federal and State laws, by means of educational materials and discussions in groups and with individual residents;

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- 3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or
  - 4) Engage in other methods of asserting, advising and representing residents so as to extend to them full enjoyment of their rights. (Section 2-110(a) of the Act)
    - i) No visitor shall enter the immediate living area of any resident without first identifying himself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. (B) (Section 2-110(b) of the Act)
    - j) A resident may terminate at any time a visit by a person having access to the resident's living area. (Section 2-110(b) of the Act)
- (Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)
- Section 300.3260 Resident's Funds
- a) A resident shall be permitted to manage his own financial affairs unless he or his guardian or if the resident is a minor, his parent, authorizes the administrator of the facility in writing to manage such resident's financial affairs under subsections (b) through (o) of this Section. (Section 2-102 of the Act)
  - b) The facility shall at the time of admission, provide in order of priority, each resident, or the resident's guardian, if any, or the residents representative, if any, or the resident's immediate family member, if any, with a written statement explaining to the resident and the resident's spouse their spousal impoverishment rights as defined at Section 5-4 of the Illinois Public Aid Code, and at Section 303 of Title III of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360), and the resident's rights regarding personal funds and listing the services for which the resident will be charged. The facility shall obtain a signed acknowledgement from each resident or the resident's representative, if any, or the resident's immediate family member, if any, that such person has received the statement. (Section 2-201(1) of the Act)
  - c) The facility may accept funds from a resident for safekeeping and managing, if it receives written authorization from, in order of priority, the resident or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any; such authorization shall be attested to by a witness who has no pecuniary interest in the facility or its operations, and who is not connected in any way to facility personnel or the administrator in any manner whatsoever. (Section 2-101(2) of the Act)
  - d) The facility shall maintain and allow, in order of priority, each resident or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any, access to a written record of all financial arrangements and transactions involving the individual resident's funds. (Section 2-201(3) of the Act)
  - e) The facility shall provide, in order of priority, each resident, or the resident's guardian, if any, or the resident's representative, if any, or the resident's immediate family member, if any, with a written itemized statement at least quarterly, of all financial transactions involving the resident's funds. (Section 2-201(4) of the Act)
  - f) The facility shall purchase a surety bond, or otherwise provide assurance satisfactory to the Departments of Public Health and Insurance that all residents' personal funds deposited with the facility are secure against loss, theft, and insolvency. (Section 2-201(5) of the Act)
    - 1) If a surety bond is secured, it must be issued by a company licensed to do business in Illinois, the amount of bond must be equal to or greater than all resident funds managed

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by the facility, and the obligee named in the bond must be the Illinois Department of Public Health or its assignees.

2) If an alternative to a surety bond is secured, the alternative must provide a protection equivalent to that afforded by a surety bond. To be acceptable, the alternative must have a person(s) or entity(ies) designated who can collect in case of loss (e.g., residents, the Department). The alternative must also provide a guarantee that lost funds will be repaid. The guarantee may be made either by an independent entity (e.g., a bank) or the facility. If the facility provides the guarantee, it must be backed by facility money at least equal to resident funds. This money must be reserved solely for the purpose of assuring the security of resident funds. Two examples of acceptable alternatives to surety bonds are letters of credit and self-insurance. Both surety bonds and alternatives must protect the full amount of residents' funds deposited with the facility.

3) Any alternative to a surety bond shall be submitted to the Department for review and approval. Alternatives that meet the requirements of this Section and were in place prior to October 1, 1994, must be submitted to the Department for review and approval within 120 days after October 1, 1994.

g) The facility shall keep any funds received from a resident for safekeeping in an account separate from the facility's funds, and shall at no time withdraw any part or all of such funds for any purpose other than to return the funds to the resident upon the request of the resident or any other person entitled to make such request, to pay the resident his allowance, or to make any other payment authorized by the resident or any other person entitled to make such authorization. (Section 2-201(6) of the Act)

h) The facility shall deposit any funds received from a resident in excess of \$100 in an interest bearing account insured by agencies of, or corporations chartered by, the State or federal government. The account shall be in a form which clearly indicates that the facility has only a fiduciary interest in the funds and any interest from the account shall accrue to the resident. (Section 2-201(7) of the Act)

i) The facility may keep up to \$100 of a resident's money in a non-interest bearing account or petty cash fund, to be readily available for the resident's current expenditures. (Section 2-201(7) of the Act)

j) The facility shall return to the resident, or the person who executed the written authorization required in subsection (c) of this Section, upon written request, all or any part of the resident's funds given the facility for safekeeping, including the interest accrued from deposits. (Section 2-201(8) of the Act)

k) The facility shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the facility has written authorization from the resident or the resident's guardian, or if the resident is a minor, his parent, to handle it differently. (Section 2-2-1(9) of the Act)

l) Unless otherwise provided by State law, the facility shall upon the death of a resident provide the executor or administrator of the resident's estate with a complete accounting of all the resident's personal property, including any funds of the resident being held by the facility. (Section 2-201(10) of the Act)

m) If an adult resident is incapable of managing his funds and does not have a resident's representative, guardian, or an immediate family member the facility shall notify the Office of the State Guardian of the Guardianship and Advocacy Commission. (Section 2-201(11) of the Act)

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- n) If the facility is sold, the seller shall provide the buyer with a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new owner. (Section 2-201(12) of the Act)
- o) The facility shall take all steps necessary to ensure that a personal needs allowance that is placed in a resident's personal account is used exclusively by the resident or for the benefit of the resident. Where such funds are withdrawn from the resident's personal account by any person other than the resident, the facility shall require such person to whom funds constituting any part of a resident's personal needs allowance are released to execute an affidavit that such funds shall be used exclusively for the benefit of the resident. (Section 2-201(9)(b) of the Act) "Personal needs allowance," for the purposes of this subsection, refers to the monthly allowance allotted by the Illinois Department of Public Aid to public aid recipients.  
(Source: Amended at 18 Ill. Reg. 15868, effective October 15, 1994)
- Section 300.3270 Residents' Advisory Council  
Each resident shall have the right to participate in a residents' advisory council as indicated in Section 300.640.  
(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)
- Section 300.3280 Contract With Facility  
Each resident shall have the right to contract with the facility as indicated in Section 300.630.  
(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)
- Section 300.3290 Private Right of Action
- a) Each resident shall have the right to maintain a private right of action against a facility as described in subsections (b) through (i) of this Section.
- b) The owner and licensee of a facility are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident.  
(Section 3-601 of the Act)
- c) The licensee shall pay three times the actual damages, or \$500, whichever is greater, and costs and attorney's fees to a facility resident whose rights as specified in Part I of Article II of the Act are violated. (Section 3-602 of the Act)
- d) A resident may maintain an action under the Act and this Part for any other type of relief, including injunctive and declaratory relief, permitted by law. (Section 3-603 of the Act)
- e) Any damages recoverable under subsection (b) through (i) of this Section, including minimum damages as provided by this Part, may be recovered in any action which a court may authorize to be brought as a class action pursuant to the Civil Practice law (Ill. Rev. Stat. 1987, ch. 110, par. 2-801 et seq.). The remedies provided in subsections (b) through (i) of this Section are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of a suit hereunder. (Section 3-604 of the Act)
- f) The amount of damages recovered by a resident in an action brought under subsection (b) through (i) of this Section shall be exempt for purposes of determining initial or continuing eligibility for medical assistance under "The Illinois Public Aid Code," (Ill. Rev. Stat. 1987, ch. 23, par. 1-1 et seq.) as now or hereafter amended, and shall neither be taken into consideration nor required to be applied toward the payment or partial payment

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of the cost of medical care or services available under "The Illinois Public Aid Code."  
(Section 3-605 of the Act)

g) Any waiver by a resident or his legal representative of the right to commence an action under subsection (b) through (i) of this Section, whether oral or in writing, shall be null and void, and without legal force or effect. (Section 3-606 of the Act)

h) Any party to an action brought under subsection (b) through (i) of this Section shall be entitled to a trial by jury and any waiver of the right to a trial by jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect. (Section 3-607 of the Act)

i) A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss, or retaliate against a resident, a resident's representative, or an employee or agent who makes a report of resident abuse or neglect, brings or testifies in a private right of action, or files a complaint, because of the such action or testimony. (B) (Section 3-608 of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3300 Transfer or Discharge

a) A resident may be voluntarily discharged from a facility after he gives the administrator, a physician, or a nurse of the facility written notice of his desire to be discharged. If a guardian has been appointed for a resident or if the resident is a minor, the resident shall be discharged upon written consent of his guardian or if the resident is a minor, his parent unless there is a court order to the contrary. In such cases, upon the resident's discharge, the facility is relieved from any responsibility for the resident's care, safety or well-being. (Section 2-111 of the Act)

b) Each resident's rights regarding involuntary transfer or discharge from a facility shall be as described in subsections (c) through (y) of this Section.

c) Reasons for Transfer or Discharge

1) A facility may involuntarily transfer or discharge a resident only for one or more of the following reasons:

A) for medical reasons.

B) for the resident's physical safety.

C) for the physical safety of other residents, the facility staff or facility visitors.

D) for either late payment or nonpayment for the resident's stay, except as prohibited by Title XVIII and XIX of the Federal Social Security Act. For purposes of this Section, "late payment" means non-receipt of payment after submission of a bill. If payment is not received within 45 days after submission of a bill, the facility may send a notice to the resident and responsible party requesting payment within 30 days. If payment is not received within such 30 days, the facility may thereupon institute transfer or discharge proceedings by sending a notice of transfer or discharge to the resident and responsible

party by registered or certified mail. The notice shall state, in addition to the requirements of Section 3-403 of the Act and subsection (e) of this Section, that the responsible party has the right to pay the amount of the bill in full up to the date the transfer or discharge is to be made and then the resident shall have the right to remain in the facility. Such payment shall terminate the transfer or discharge proceedings. This subsection does not apply to those residents whose care is provided under the Illinois Public Aid Code. (B) (Section 3-401 of the Act)

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2) Prohibition of Discrimination

A) A facility participating in the medical assistance program is prohibited from failing or refusing to retain as a resident any person because the resident is a recipient of or an applicant for the medical assistance program. For the purposes of this Section, a recipient or applicant shall be considered a resident in the facility during any hospital stay totaling ten days or less following a hospital admission. The day on which a resident is discharged from the facility and admitted to the hospital shall be considered the first day of the ten-day period. (Section 3-401.1(a) of the Act)

B) A facility which violates subsection (c)(2)(B) of this Section shall be guilty of a business offense and fined not less than \$500 nor more than \$1,000 for the first offense and not less than \$1,000 nor more than \$5,000 for each subsequent offense. (Section 3-401.1(b) of the Act)

d) Involuntary transfer or discharge of a resident from a facility shall be preceded by the discussion required under subsection (j) of this Section and by a minimum written notice of 21 days. The 21-day requirement shall not apply in any of the following instances:

1) When an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician; (Section 3-402(a) of the Act)

2) When the transfer or discharge is mandated by the physical safety of other residents as documented in the clinical record. (Section 3-402(b) of the Act)

e) The notice required by subsection (d) of this Section shall be on a form prescribed by the Department and shall contain all of the following:

1) The stated reason for the proposed transfer or discharge; (Section 3-403(a) of the Act)

2) The effective date of the proposed transfer or discharge; (Section 3-403(b) of the Act)

3) A statement in not less than 12-point type, which reads:

"You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may file a request for a hearing with the Department of Public Health within ten days after receiving this notice. If you request a hearing, it will be held not later than ten days after your request, and you generally will not be transferred or discharged during that time. If the decision following the hearing is not in your favor, you generally will not be transferred or discharged prior to the expiration of 30 days following receipt of the original notice of the transfer or discharge. A form to appeal the facility's decision and to request a hearing is attached. If you have any questions, call the Department of Public Health at the telephone number listed below." (Section 3-403(c) of the Act)

4) A hearing request form, together with a postage paid, preaddressed envelope to the Department; and (Section 3-403(d) of the Act)

5) The name, address, and telephone number of the person charged with the responsibility of supervising the transfer or discharge. (Section 3-403(e) of the Act)

f) A request for a hearing made under subsection (e) of this Section shall stay a transfer pending a hearing or appeal of the decision, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (Section 3-404 of the Act)

g) A copy of the notice required by subsection (d) of this Section shall be placed in the resident's clinical record and a copy shall be transmitted to the Department, the resident,

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the resident's representative, and, if the resident's care is paid for in whole or part through Title XIX, to the Department of Public Aid. (Section 3-405 of the Act)

h) When the basis for an involuntary transfer or discharge is the result of an action by the Department of Public Aid with respect to a recipient of Title XIX and a hearing request is filed with the Department of Public Aid, the 21-day written notice period shall not begin until a final decision in the matter is rendered by the Department of Public Aid or a court of competent jurisdiction and notice of that final decision is received by the resident and the facility. (Section 3-406 of the Act)

i) When nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to redeem up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (Section 3-407 of the Act)

j) The planned involuntary transfer or discharge shall be discussed with the resident, the resident's representative and person or agency responsible for the resident's placement, maintenance, and care in the facility. The explanation and discussion of the reasons for involuntary transfer or discharge shall include the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's clinical record. (Section 3-408 of the Act)

k) The facility shall offer the resident counseling services before the transfer or discharge of the resident. (Section 3-409 of the Act)

l) A resident subject to involuntary transfer or discharge from a facility, the resident's guardian or if the resident is a minor, his parent shall have the opportunity to file a request for a hearing with the Department within ten days following receipt of the written notice of the involuntary transfer or discharge by the facility. (Section 3-410 of the Act)

m) The Department of Public Health, when the basis for involuntary transfer or discharge is other than action by the Department of Public Aid with respect to the Title XIX Medicaid recipient, shall hold a hearing at the resident's facility not later than ten days after a hearing request is filed, and render a decision within 14 days after the filing of the hearing request. (Section 3-411 of the Act)

n) The hearing before the Department provided under subsection (m) of this Section shall be conducted as prescribed under Sections 3-703 through 3-712 of the Act. In determining whether a transfer or discharge is authorized, the burden of proof in this hearing rests on the person requesting the transfer or discharge. (Section 3-412 of the Act)

o) If the Department determines that a transfer or discharge is authorized under subsection (c) of this Section, the resident shall not be required to leave the facility before the 34th day following receipt of the notice required under subsection (d) of this Section, or the tenth day following receipt of the Department's decision, whichever is later, unless a condition which would have allowed transfer or discharge in less than 21 days as described under subsections (d)(1) and (2) of this Section develops in the interim. (B) (Section 3-413 of the Act)

p) The Department of Public Aid shall continue Title XIX Medicaid funding during the appeal, transfer, or discharge period for those residents who are Title XIX recipients affected by subsection (c) of this Section. (Section 3-414 of the Act)

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q) The Department may transfer or discharge any resident from any facility required to be licensed under this Act when any of the following conditions exist:

- 1) Such facility is operating without a license; (Section 3-415(a) of the Act)
- 2) The Department has suspended, revoked or refused to renew the license of the facility as provided under Section 3-119 of the Act. (Section 3-415(b) of the Act)
- 3) The facility has requested the aid of the Department in the transfer or discharge of the resident and the Department finds that the resident consents to transfer or discharge; (Section 3-415(c) of the Act)
- 4) The facility is closing or intends to close and adequate arrangement for relocation of the resident has not been made at least 30 days prior to closure; or (Section 3-415(d) of the Act)
- 5) The Department determines that an emergency exists which requires immediate transfer or discharge of the resident. (Section 3-415(e) of the Act)

r) In deciding to transfer or discharge a resident from a facility under subsection (q) of this Section, the Department shall consider the likelihood of serious harm which may result if the resident remains in the facility. (Section 3-416 of the Act)

s) The Department shall offer transfer or discharge and relocation assistance to residents transferred or discharged under subsections (c) through (q) of this Section including information on available alternative placements. Residents shall be involved in planning the transfer or discharge and shall choose among the available alternative placements, except that where an emergency makes prior resident involvement impossible, the Department may make a temporary placement until a final placement can be arranged. Residents may choose their final alternative placement and shall be given assistance in transferring to such place. No resident may be forced to remain in a temporary or permanent placement. Where the Department makes or participates in making the relocation decision, consideration shall be given to proximity to the resident's relatives and friends. The resident shall be allowed three visits to potential alternative placements prior to removal, except where medically contraindicated or where the need for immediate transfer or discharge requires reduction in the number of visits. (Section 3-417 of the Act)

t) The Department shall prepare resident transfer or discharge plans to assure safe and orderly removals and protect residents' health, safety, welfare and rights. In nonemergencies and where possible in emergencies, the Department shall design and implement such plans in advance of transfer or discharge. (Section 3-418 of the Act)

u) The Department may place relocation teams in any facility from which residents are being discharged or transferred for any reason, for the purpose of implementing transfer or discharge plans. (Section 3-419 of the Act)

v) In any transfer or discharge conducted under subsections (q) through (t) of this Section the Department shall:

- 1) Provide written notice to the facility prior to the transfer or discharge. The notice shall state the basis for the order of transfer or discharge and shall inform the facility of its right to an informal conference prior to transfer or discharge under this Section, and its right to a subsequent hearing under subsection (x) of this Section. If a facility desires to contest a nonemergency transfer or discharge, prior to transfer or discharge it shall, within four working days after receipt of the notice, send a written request for an informal conference to the Department. The Department shall, within four working days from the



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receipt of the request, hold an informal conference in the county in which the facility is located. Following this conference, the Department may affirm, modify or overrule its previous decision. Except in an emergency, transfer or discharge may not begin until the period for requesting a conference has passed or, if a conference is requested, until after a conference has been held; and (Section 3-420(a) of the Act)

2) Provide written notice to any resident to be removed, to the resident's representative, if any, and to a member of the resident's family, where practicable, prior to the removal. The notice shall state the reason for which transfer or discharge is ordered and shall inform the resident of the resident's right to challenge the transfer or discharge under subsection (x) of this Section. The Department shall hold an informal conference with the resident or the resident's representative prior to transfer or discharge at which the resident or the representative may present any objections to the proposed transfer or discharge plan or alternative placement. (Section 3-420(b) of the Act)

w) In any transfer or discharge conducted under subsection (q)(5) of this Section, the Department shall notify the facility and any resident to be removed that an emergency has been found to exist and removal has been ordered, and shall involve the residents in removal planning if possible. Following emergency removal, the Department shall provide written notice to the facility, to the resident, to the resident's representative, if any, and to a member of the resident's family, where practicable, of the basis for the finding that an emergency existed and of the right to challenge removal under subsection (x) of this Section. (Section 3-421 of the Act)

x) Within ten days following transfer or discharge, the facility or any resident transferred or discharged may send a written request to the Department for a hearing under Section 3-703 of the Act to challenge the transfer or discharge. The Department shall hold the hearing within 30 days of receipt of the request. Where a challenge is by a resident, the hearing shall be held at a location convenient to the resident. If the facility prevails, it may file a claim against the State under the Court of Claims Act for payments less expenses saved as a result of the transfer or discharge. No resident transferred or discharged may be held liable for the charge for care which would have been made had the resident remained in the facility. If a resident prevails, the resident may file a claim against the State under the Court of Claims Act (Ill. Rev. Stat. 1987, ch. 37, pars. 439.1 et seq.) for any excess expenses directly caused by the order to transfer or discharge. The Department shall assist the resident in returning to the facility if assistance is requested. (Section 3-422 of the Act)

y) Any owner of a facility licensed under this Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team

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in the facility as provided under subsection (u) of this Section. (A, B) (Section 3-423 of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3310 Complaint Procedures

- a) A resident shall be permitted to present grievances on behalf of himself and others to the administrator, the Long-Term Care Facility Advisory Board, the residents' advisory council, State governmental agencies or other persons without threat of discharge or reprisal in any form or manner whatsoever. (Section 2-112 of the Act)
- b) The facility administrator shall provide all residents or their representatives with the name, address, and telephone number of the appropriate State governmental office where complaints may be lodged. (Section 2-112 of the Act)
- c) A person who believes that the Act or a rule promulgated under the Act may have been violated may request an investigation. The request may be submitted to the Department in writing, by telephone, or by personal visit. An oral complaint shall be reduced to writing by the Department. (Section 3-702(a) of the Act)
- d) The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint. (Section 3-702(b) of the Act)
- e) The Department shall not disclose the name of the complainant unless the complainant consents in writing to the disclosure or the investigation results in a judicial proceeding, or unless disclosure is essential to the investigation. The complainant shall be given the opportunity to withdraw the complaint before disclosure. Upon the request of the complainant, the Department may permit the complainant or a representative of the complainant to accompany the person making the on-site inspection of the facility. (Section 3-702(c) of the Act)
- f) Upon receipt of a complaint, the Department shall determine whether the Act or a rule promulgated under the Act has been or is being violated. The Department shall investigate all complaints alleging abuse or neglect within seven days after the receipt of the complaint except that complaints of abuse or neglect which indicate that a resident's life or safety is in imminent danger shall be investigated within 24 hours after receipt of the complaint. All other complaints shall be investigated within 30 days after the receipt of the complaint. All complaints shall be classified as "an invalid report," "a valid report," or "an undetermined report." For any complaint classified as "a valid report," the Department must determine within 30 working days if any rule or provision of the Act has been or is being violated. (Section 3-702(d) of the Act)
- g) Upon the request of a resident or complainant, the Department may permit the resident or complainant or a representative of the complainant to accompany the person making the on-site inspection of the facility pursuant to the complaint. (Section 3-702(c) of the Act)
- h) In all cases, the Department shall inform the complainant of its findings within ten days of its determination unless otherwise indicated by the complainant, and the complainant may direct the Department to send a copy of such findings to another person. The Department's findings may include contents or documentation provided by either the complainant or the licensee pertaining to the complaint. The Department shall also notify the facility of such findings within ten days of the determination, but the name

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of the complainant or residents shall not be disclosed in this notice to the facility. The notice of such findings shall include a copy of the written determination; the correction order, if any; the inspection report; the warning notice, if any; and the State licensure form on which the violation is listed. (Section 3-702(e) of the Act)

i) A written determination, correction order, or warning notice concerning a complaint shall be available for public inspection, but the name of the complainant or resident shall not be disclosed without the consent of the complainant or resident. (Section 3-702(f) of the Act)

j) A complainant who is dissatisfied with the determination or investigation by the Department may request a hearing under subsection (k) of this Section. The facility shall be given notice of any such hearing and may participate in the hearing as a party. If a facility requests a hearing under subsection (k) of this Section which concerns a matter covered by a complaint, the complainant shall be given written notice and may participate in the hearing as a party. A request for a hearing by either a complainant or a facility shall be submitted in writing to the Department within 30 days after the mailing of the Department's findings as described in subsection (h) of this Section. Upon receipt of the request the Department shall conduct a hearing as provided under subsection (k) of this Section. (Section 3-702(g) of the Act)

k) Any person aggrieved by a decision of the Department rendered in a particular case which affects the legal rights, duties or privileges created under the Act may have such decision reviewed in accordance with Sections 3-703 through 3-712 of the Act.

l) When the Department finds that a provision of Article II of the Act regarding residents' rights has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or \$100, whichever is greater.

(Source: Amended at 16 Ill. Reg. 17089, effective November 3, 1992)

Section 300.3320 Confidentiality

a) The Department, the facility and all other public or private agencies shall respect the confidentiality of a resident's record and shall not divulge or disclose the contents of a record in a manner which identifies a resident, except upon a resident's death to a relative or guardian, or under judicial proceedings. This Section shall not be construed to limit the right of a resident or a resident's representative to inspect or copy the resident's records. (Section 2-206(a) of the Act)

b) Confidential medical, social, personal, or financial information identifying a resident shall not be available for public inspection in a manner which identifies a resident. (B) (Section 2-206(b) of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

Section 300.3330 Facility Implementation

a) The facility shall establish written policies and procedures to implement the responsibilities and rights provided in Article II of the Act. The policies shall include the procedure for the investigation and resolution of resident complaints under the Act. The policies shall be clear and unambiguous and shall be available for inspection by any person. A summary of the policies and procedures, printed in not less than 12 point type, shall be distributed to each resident and representative. (Section 2-210 of the Act)

b) The facility shall provide copies of these policies and procedures upon request to next of kin, sponsoring agencies, representative payees and the public.

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- c) Each resident and resident's guardian or other person acting for the resident shall be given a written explanation prepared by the Office of the State Long-term Care Ombudsman of all the rights enumerated in Part 1 of Article II of the Act and in Part 4 of Article III. For residents of facilities participating in Title 18 or 19 of the Social Security Act, the explanation shall include an explanation of residents' rights enumerated in the Act. The explanation shall be given at the time of admission to a facility or as soon thereafter as the condition of this resident permits, but in no event later than 48 hours after admission, and again at least annually thereafter. At the time of implementation of the Act each resident shall be given a written summary of all the rights enumerated in Part I of Article II of the Act. If a resident is unable to read such written explanation, it shall be read to the resident in a language the resident understands. In the case of a minor or a person having a guardian or other person acting for him, both the resident and the parent, guardian or other person acting for the resident shall be fully informed of these rights. (Section 2-211 of the Act)
- d) The resident, resident's representative, guardian, or parent of a minor resident shall acknowledge in writing the receipt from the facility of a copy of all resident rights set forth in Article II of the Act and a copy of all facility policies implementing such rights.
- e) The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in the Act and this Part. (Section 2-212 of the Act) (B)  
(Source: Amended at 17 Ill. Reg. 19279, effective October 26, 1993)

**Indiana**

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410 IAC 16.2-3.1-3 Residents' rights

Authority: IC 16-28-1-7; IC 16-28-1-12

Affected: IC 16-28-5-1

Sec. 3. (a) 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 each of the following rights:

(1) To exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) To be free of the following:

(A) Interference.

(B) Coercion.

(C) Discrimination.

(D) Reprisal from or threat of reprisal from the facility in exercising his or her rights.

(b) The resident has the right to the following:

(1) Examination of the results of the most recent annual survey of the facility conducted by federal or state surveyors, any plan of correction in effect with respect to the facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.

(2) Receipt of information from agencies acting as client advocates and the opportunity to contact these agencies.

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- (c) In the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the residents are exercised by the person appointed under state law to act on the resident's behalf.
- (d) In the case of an incompetent resident who has not been adjudicated incompetent by a state court, any legal representative may exercise the resident's rights to the extent provided by state law.
- (e) The resident has the right to:
  - (1) Refuse to perform services for the facility;
  - (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 care plan;
    - (B) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
    - (C) Compensation for paid services is at or above the prevailing rates; and
    - (D) The resident agrees to the work arrangement described in the care plan.
- (f) The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.
- (g) A resident has the right to organize and participate in resident groups in the facility.
- (h) A resident's family has the right to meet in the facility with the families of other residents in the facility.
- (i) The facility must provide a resident or family group, if one exists, with private space.
- (j) Staff or visitors may attend meetings only at the group's invitation.
- (k) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.
- (l) 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 at a later time in accordance with facility policy.
- (m) 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.
- (n) The resident has the right to the following:
  - (1) Choose a personal attending physician and other providers of services. If a physician or other provider of services, or both, of the resident's choosing fails to fulfill a given federal or state requirement to assure the provisions of appropriate and adequate care and treatment, the facility will have the right, after consulting with the resident, the physician, and the other provider of services, to seek alternate physician participation or services from another provider.
  - (2) Be fully informed in advance about care and treatment, and of any changes in that care and treatment, that may affect the resident's well-being.
  - (3) Participate in planning care and treatment or changes in care and treatment unless adjudged incompetent or otherwise found to be incapacitated under state law.
- (o) The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.
- (p) Personal privacy includes the following:
  - (1) Accommodations.
  - (2) Medical treatment.
  - (3) Written and telephone communications.

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- (4) Personal care.
  - (5) Visits.
  - (6) Meetings of family and resident groups. This does not require the facility to provide a private room for each resident.
  - (q) Except as provided in subsection (r), the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.
  - (r) The resident's rights to refuse release of personal and clinical records does not apply when:
    - (1) the resident is transferred to another health care institution; or
    - (2) record release is required by law.
  - (s) The resident has the right to privacy in written communications, including the right to:
    - (1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident;
    - (2) have access to stationery, postage, and writing implements at the resident's own expense; and
    - (3) receive any literature or statements of services that accompany mailings from Medicaid that the facility receives on behalf of the resident.
  - (t) The resident has the right to be cared for in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.
  - (u) The resident has the right to the following:
    - (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.
    - (2) Interact with members of the community both inside and outside the facility.
    - (3) Make choices about aspects of his or her life in the facility that are significant to the resident.
  - (v) A resident has the right to the following:
    - (1) Reside and receive services in the facility with reasonable accommodations of the individual's needs and preferences, except when the health or safety of the individual or other residents would be endangered.
    - (2) Receive notice before the resident's room or roommate in the facility is changed.
  - (w) 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.
  - (x) For purposes of IC 16-28-5-1, a breach of:
    - (1) subsection (a), (b)(1), (e), (n), (o), (p), (q), (r), (t), or (w) is a deficiency;
    - (2) subsection (b)(2), (c), (d), (f), (g), (l), (m), (s), (u), or (v) is a noncompliance; and
    - (3) subsection (h), (i), (j), or (k) is a nonconformance.
- (Indiana State Department of Health; 410 IAC 16.2-3.1-3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1528, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3988)

**Iowa**

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58.39(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 58.39(2) to 58.39(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually.

(II)

58.39(2) Policies and procedures shall address the admission and retention of persons with histories of dangerous or disturbing behavior. For the purposes of the subrule, persons with histories of dangerous or disturbing behavior are those persons who have been found to be seriously mentally impaired pursuant to Iowa Code section 229.13 or 812.1 within six months of the request for admission to the facility. In addition to establishing the criteria for admission and retention of persons so defined, the policies and procedures shall provide for:

a.

Reasonable precautions to prevent the resident from harming self, other residents, or employees of the facility.

b.

Treatment of persons with mental illness as defined in Iowa Code section 229.1(1) and which is provided in accordance with the individualized health care plan.

c.

Ongoing and documented staff training on individualized health care planning for persons with mental illness.

58.39(3) Policies and procedures regarding the admission, transfer, and discharge of residents shall ensure that:

a.

Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)

b.

As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

58.39(4) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

58.39(5) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for ensuring a response and disposition by the facility. (II)

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58.39(6) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

58.39(7) Policies and procedures shall include a provision that each resident shall be fully informed of the resident's rights and responsibilities as a resident and of all rules governing resident conduct and responsibilities. This information must be provided upon admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II)

a.

The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

b.

Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English speaking or deaf, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II)

c.

A statement shall be signed by the resident, or the resident's responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a mentally retarded resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

d.

In order to ensure that residents continue to be aware of these rights and responsibilities during their stay, a written copy shall be prominently posted in a location that is available to all residents. (II)

e.

All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf, or blind residents of such changes. (II)

58.39(8) Each resident or responsible party shall be fully informed in a contract as required in rule 58.13(135C), prior to or at the time of admission and during the



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resident's stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate. (II)

58.39(9) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or mentally retarded individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a.

The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either, shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b.

The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c.

If the physician determines or in the case of a confused or mentally retarded resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d.

The resident's plan of care shall be based on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e.

Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended to December 1, 1981 (45 CFR 46). A resident being considered for participation in experimental research must be fully informed of the nature

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of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

This rule is intended to implement Iowa Code section 135C.23(2).

In Title 481. Chapter 58 Section 41 Resident Rights:

481-58.41(135C)-Resident Rights

Each resident shall be encouraged and assisted throughout the resident's period of stay, to exercise rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of the resident's choice, free from interference, coercion, discrimination, or reprisal. (II)

58.41(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

58.41(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

a. Designation of an employee responsible for handling grievances and recommendations. (II)

b. A method of investigating and assessing the validity of a grievance or recommendation. (II)

c. Methods of resolving grievances. (II)

d. Methods of recording grievances and actions taken. (II)

58.41(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and resident advocate committee members and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

481-58.42(135C) Financial affairs-Management

Each resident who has not been assigned a guardian or conservator by the court may manage the resident's own personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code Section 135.C.24 (II)

58.42(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

58.42(2) AN employee shall be designated in writing to be responsible for residents' accounts. (II)

58.42(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or mentally retarded

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resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

58.42(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that the resident has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

58.42(5) A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

58.42(6) A resident's personal funds shall be returned to the resident when the funds have been used without the written consent of the resident or the resident's guardian. The department may report findings that resident funds have been used without written consent to an audits division or the local law enforcement agency, as appropriate. (II)  
481-58.43(135C)-Resident abuse prohibited.

Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: When authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

58.43(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

58.43(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

58.43(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

58.43(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I-the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: divided doors and totally enclosed cribs.

Type II-the application of a device to the body to promote safety of the individual. Examples: vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III-the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: wrist, ankle or leg restraints and waist straps.

58.43(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to the resident or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedures(s) designed to modify the behavioral problems for which the resident is restrained, or as a last resort, after failure of attempted therapy. (I, II)

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58.43(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

58.43(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

a) Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

b) Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

c) A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

d) A resident placed in a Type II or III restraint shall be checked at least every 30 minutes by appropriately trained staff. No form of restraint shall be used or applied in such a manner as to cause injury or the potential of injury and provide a minimum of discomfort to resident restrained. (I, II)

e) Reorders are issued only after the attending physician reviews the resident's condition. (II)

f) Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g) The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h) Locked restraints or leather restraints shall not be permitted except in life-threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed (I, II)

i) Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every 12 hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every 30 days and documented on the nurse's progress record. (II)

j) A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in the resident's room. (II)

k) Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l) Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m) The facility shall provide orientation and ongoing education programs in the proper use of restraints.

58.43(8) In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be

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conducted only with the informed consent of the individual's parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a) The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b) The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

58.43(9) Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain that separation until the abuse investigation is completed. (I, II)

58.43(10) Suspected abuse reports. The department shall investigate all complaints of dependent adult abuse which are alleged to have happened in a health care facility. The department shall inform the department of human services of the results of all evaluations and dispositions of dependent adult abuse investigations.

58.43(11) Pursuant to Iowa Code Chapter 235B, a mandatory reporter of dependent adult abuse is any person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse. This includes a member of the staff or employee of a health care facility. (II, III)

If a staff member or employee is required to report pursuant to this subrule, the staff member or employee shall immediately notify the person in charge of the facility or the person's designated agent, and the person in charge or the designated agent shall make the report to the department of human services. (I, II)

This rule is intended to implement Iowa Code sections 135C.14, 235B.3(1), and 235B.3(11).

### 481-58.44(135C)-Resident records

Each resident shall be ensured confidential treatment of all information contained in the resident's records, including information contained in an automatic data bank. The resident's written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

58.44(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(3) The resident, or the resident's responsible party, shall be entitled to examine all information contained in the resident's record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case the information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

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### 481-58.45(135C) Dignity preserved

The resident shall be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs. (II)

58.45(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

58.45(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

58.45(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passerby. People not involved in the care of the residents shall not be present without the resident's consent while the resident is being examined or treated. (II)

58.45(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

58.45(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply in emergency conditions. (II)

### 481-58.46(135C) Resident work

No resident may be required to perform services for the facility, except as provided by Iowa Code sections 35D.14 and 347B.5 (II)

58.46(1) Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

58.46(2) If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

58.46(3) Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staff requirements. (II)

### 481-58.47(135C) Communications

Each resident may communicate, associate, and meet privately with persons of the resident's choice, unless to do so would infringe upon the rights of other residents, and may send and receive personal mail unopened. (II)

58.47(1) Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

58.47(2) Reasonable, regular visiting hours shall not be less than 12 hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

a) The resident refuses to see the visitor(s). (II)

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- b) The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. (II)
  - c) The visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)
- 58.47(3) Decisions to restrict a visitor are reviewed and reevaluated: each time the medical orders are reviewed by the physician; at least quarterly by the facility's staff; or at the resident's request. (II)
- 58.47(4) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)
- 58.47(5) Telephones consistent with ANSI standards (405.1134(c)) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the telephone. (II)
- 58.47(6) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)
- 58.47(7) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified mental retardation professional or facility administrator for refusing permission. (II)
- 58.47(8) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)
- 481-58.48(135C) Resident activities
- Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or qualified mental retardation professional as appropriate in the resident's record. (II)
- 58.48(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)
- 58.48(2) All residents shall have the freedom to refuse to participate in these activities. (II)
- 481-58.49(135C) Resident Property
- Each resident may retain and use personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)
- 58.49(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)
- 58.49(2) Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)
- 58.49(3) Any personal clothing or possessions retained by the facility for the resident during the resident's stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the

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items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

58.49(4) A resident's personal property shall not be used without the written consent of the residents or the resident's guardian. (II)

58.49(5) A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

### 481-58.50(135C) Family visits

Each resident, if married, shall be ensured privacy for visits by the resident's spouse; if both are residents in the facility, they shall be permitted to share a room if available. (II)

58.50(1) The facility shall provide for needed privacy in visits between spouses. (II)

58.50(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

58.50(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

### 481-58.51(135C) Choice of physician and pharmacy

Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility.

A facility shall not require the repackaging of medications dispensed by the Veterans Administration or an institution operated by the Veterans Administration for the purpose of making the drug distribution system compatible with the system used by the facility. (II)

### 481-58.52(135C) Incompetent resident

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party when a resident is adjudicated incompetent in accordance with state law or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42CFR483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A

58.52(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

### 481-58.53(135C) County care facilities

In addition to Chapter 58 licensing rules, county care facilities licensed as nursing facilities must also comply with department of human services rules, 441-chapter37. Violation of any standard established by the department of human services is a Class II violation pursuant to 481-56.2(135C)



**Kansas**

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**RESIDENT RIGHTS**

**28-39-147. Rights of residents** in adult care homes licensed as nursing facilities, assisted living facilities, residential health care facilities, home plus, boarding care homes and adult day care facilities. Each resident shall have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the adult care home.

Each adult care home shall protect and promote the rights of each resident as set forth in this regulation.

(a) Exercise of rights.

(1) The adult care home shall afford each resident the right to exercise his or her rights as a resident of the adult care home and as a citizen.

(2) The adult care home shall afford each resident the right to be free from interference, coercion, discrimination, or reprisal from the adult care home in exercising the resident's rights.

(3) If a resident is adjudged incompetent under the laws of the state of Kansas, the legal representative of the resident shall have the power to exercise rights on behalf of the resident.

(4) In the case of a resident who has executed a durable power of attorney for health care decisions, the agent may exercise the rights of the resident to the extent provided by K.S.A. 58-625 through 632.

(b) Notice of rights and services.

(1) Before admission, the adult care home shall inform each resident or resident's legal representative, both orally and in writing, in a language the resident understands, of the following:

(A) The rights of residents;

(B) the rules governing resident conduct and responsibility; and

(C) the rates and services.

(2) Each resident shall be notified in writing of any changes in charges or services which occur after admission and at least 30 days before the effective date of the change. The changes shall not take place until notice is given.

(c) Inspection of records. The adult care home shall afford each resident or resident's legal representative the right to inspect records pertaining to the resident. The adult care home shall provide photocopies of the resident's record to each resident or resident's legal representative who submits a written request. The adult care home shall provide the photocopies within two working days of the request. The adult care home may charge a fee for the copies which shall not exceed community standards.

(d) The adult care home shall afford the resident the right to be fully informed of the resident's total health status including the resident's medical condition.

(e) Free choice. The adult care home shall afford each resident the right to:

(1) Choose a personal attending physician;

(2) participate in the development of an individual care plan or negotiated service agreement;

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- (3) refuse treatment;
- (4) refuse to participate in experimental research; and
- (5) choose the pharmacy where prescribed medications are purchased. When the adult care home uses a unit dose or similar medication distribution system, the resident shall have the right to choose among pharmacies that offer or are willing to offer the same or a compatible system.
- (f) Management of financial affairs. The adult care home shall afford each resident the right to manage personal financial affairs and the adult care home shall not require any resident to deposit personal funds with the adult care home.
- (g) Notification of changes.
  - (1) An adult care home shall immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or designated family member when there is:
    - (A) An accident involving the resident which results in injury and has the potential for requiring a physician's intervention;
    - (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 adult care home.
  - (2) The adult care home shall promptly notify the resident, the resident's legal representative, or designated family member when there is a change in room or roommate assignment.
- (h) Privacy and confidentiality. Each resident shall have the right to personal privacy and confidentiality of personal and clinical records.
  - (1) The adult care home shall provide privacy during medical and nursing treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.
  - (2) The adult care home shall ensure that personal and clinical records of the resident are maintained in a confidential manner.
  - (3) The adult care home shall obtain a release signed by the resident or the resident's legal representative before the release of records to anyone outside the adult care home, except in the case of transfer to another health care institution or as required by law.
- (i) Grievances. The adult care home shall afford each resident the right to:
  - (1) Voice grievances with respect to treatment or care that was or was not furnished;
  - (2) be free from discrimination or reprisal for voicing the grievances; and
  - (3) receive prompt efforts by the adult care home to resolve grievances the resident may have, including any grievance with respect to the behavior of other residents.
- (j) Work.
  - (1) The adult care home shall afford each resident the right to refuse to perform services for the adult care home.
  - (2) A resident may perform services for the adult care home, if the resident wishes, when:
    - (A) The adult care home has documented the need or desire for work in the plan of care or negotiated service agreement;
    - (B) the plan or agreement specifies the nature of the services performed and whether the services are voluntary or paid; and

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(C) the resident or legal representative of the resident has signed a written agreement assenting to the work arrangement described in the plan of care or negotiated service agreement.

(k) Mail. The adult care home shall afford the resident the right to privacy in written communications, including the right to:

(1) Send and receive unopened mail promptly;

(2) have access to stationery, postage and writing implements at the resident's own expense; and

(3) have outgoing mail mailed promptly.

(l) Access and visitation rights.

(1) The adult care home shall provide immediate access to any resident by:

(A) Any representative of the secretary of the Kansas department of health and environment;

(B) the resident's individual physician;

(C) the state long-term care ombudsman;

(D) any representative of the secretary of the Kansas department of social and rehabilitation services;

(E) immediate family or other relatives of the resident; and

(F) others who are visiting with the consent of the resident subject to reasonable restrictions.

(2) The adult care home shall afford each resident the right to deny or withdraw consent for visitation by any person at anytime.

(m) Telephone. The adult care home shall afford each resident the right to reasonable access to a telephone in a place where calls can be made without being overheard.

(n) Personal property. The adult care home shall afford each resident the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless doing so would infringe upon the rights or health and safety of other residents.

(o) Married couples. The adult care home shall afford each resident the right to share a room with the resident's spouse when married residents live in the same adult care home and both spouses consent.

(p) Self-administration of drugs. The adult care home shall afford each resident the right to self-administer drugs in a nursing facility unless the resident's attending physician and the interdisciplinary team has determined that this practice is unsafe. In assisted living, residential health care, home plus and adult day care facilities, a resident may self-administer drugs unless a registered professional nurse or a physician has determined that this practice is unsafe.

(Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997.)

**Kentucky**

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216.515 Rights of residents -- Duties of facilities -- Actions.

Every resident in a long-term-care facility shall have at least the following rights:

(1) Before admission to a long-term-care facility, the resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as

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evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member or his guardian, of all services available at the long-term-care facility. Every long-term-care facility shall keep the original document of each written acknowledgment in the resident's personal file.

(2) Before admission to a long-term-care facility, the resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member or his guardian, of all resident's responsibilities and rights as defined in this section and KRS 216.520 to 216.530. Every long-term-care facility shall keep the original document of each written acknowledgment in the resident's personal file.

(3) The resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member, or his guardian, prior to or at the time of admission and quarterly during the resident's stay at the facility, of all service charges for which the resident or his responsible family member or his guardian is responsible for paying. The resident and the responsible party or his responsible family member or his guardian shall have the right to file complaints concerning charges which they deem unjustified to appropriate local and state consumer protection agencies. Every long-term-care facility shall keep the original document of each written acknowledgment in the resident's personal file.

(4) The resident shall be transferred or discharged only for medical reasons, or his own welfare, or that of the other residents, or for nonpayment, except where prohibited by law or administrative regulation. Reasonable notice of such action shall be given to the resident and the responsible party or his responsible family member or his guardian.

(5) All residents shall be encouraged and assisted throughout their periods of stay in long-term care facilities to exercise their rights as a resident and a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of their choice, free from restraint, coercion, discrimination, or reprisal.

(6) All residents shall be free from mental and physical abuse, and free from chemical and physical restraints except in emergencies or except as thoroughly justified in writing by a physician for a specified and limited period of time and documented in the resident's medical record.

(7) All residents shall have confidential treatment of their medical and personal records. Each resident or his responsible family member or his guardian shall approve or refuse the release of such records to any individuals outside the facility, except as otherwise specified by statute or administrative regulation.

(8) Each resident may manage the use of his personal funds. If the facility accepts the responsibility for managing the resident's personal funds as evidenced by the facility's written acknowledgment, proper accounting and monitoring of such funds shall be made. This shall include each facility giving quarterly itemized statements to the resident and the responsible party or his responsible family member or his guardian which detail the status of the resident's personal funds and any transactions in which such funds have been received or disbursed. The facility shall return to the resident his valuables, personal possessions, and any unused balance of moneys from his account at the time of his

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transfer or discharge from the facility. In case of death or for valid reasons when he is transferred or discharged the resident's valuables, personal possessions, and funds that the facility is not liable for shall be promptly returned to the resident's responsible party or family member, or his guardian, or his executor.

(9) If a resident is married, privacy shall be assured for the spouse's visits and if they are both residents in the facility, they may share the same room unless they are in different levels of care or unless medically contraindicated and documented by a physician in the resident's medical record.

(10) Residents shall not be required to perform services for the facility that are not included for therapeutic purposes in their plan of care.

(11) Residents may associate and communicate privately with persons of their choice and send and receive personal mail unopened.

(12) Residents may retain the use of their personal clothing unless it would infringe upon the rights of others.

(13) No responsible resident shall be detained against his will. Residents shall be permitted and encouraged to go outdoors and leave the premises as they wish unless a legitimate reason can be shown and documented for refusing such activity.

(14) Residents shall be permitted to participate in activities of social, religious, and community groups at their discretion.

(15) Residents shall be assured of at least visual privacy in multibed rooms and in tub, shower, and toilet rooms.

(16) The resident and the responsible party or his responsible family member or his guardian shall be permitted the choice of a physician.

(17) If the resident is adjudicated mentally disabled in accordance with state law, the resident's guardian shall act on the resident's behalf in order that his rights be implemented.

(18) Each resident shall be treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs.

(19) Every resident and the responsible party or his responsible family member or his guardian has the right to be fully informed of the resident's medical condition unless medically contraindicated and documented by a physician in the resident's medical record.

(20) Residents have the right to be suitably dressed at all times and given assistance when needed in maintaining body hygiene and good grooming.

(21) Residents shall have access to a telephone at a convenient location within the facility for making and receiving telephone calls.

(22) The resident's responsible party or family member or his guardian shall be notified immediately of any accident, sudden illness, disease, unexplained absence, or anything unusual involving the resident.

(23) Residents have the right to have private meetings with the appropriate long-term care facility inspectors from the Cabinet for Health and Family Services.

(24) Each resident and the responsible party or his responsible family member or his guardian has the right to have access to all inspection reports on the facility.

(25) The above-stated rights shall apply in all cases unless medically contraindicated and documented by a physician in writing in the resident's medical record.

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(26) Any resident whose rights as specified in this section are deprived or infringed upon shall have a cause of action against any facility responsible for the violation. The action may be brought by the resident or his guardian. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any deprivation or infringement on the rights of a resident. Any plaintiff who prevails in such action against the facility may be entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds the plaintiff has acted in bad faith, with malicious purpose, or that there was a complete absence of justifiable issue of either law or fact. Prevailing defendants may be entitled to recover reasonable attorney's fees. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a resident and to the cabinet.

Effective: June 20, 2005 History: Amended 2005 Ky. Acts ch. 99, sec. 483, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 427, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 280, sec. 4, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 141, sec. 74, effective July 1, 1982; and ch. 157, sec. 24, effective July 15, 1982. -- Created 1978 Ky. Acts ch. 122, sec. 2, effective June 17, 1978. Note: 1980 Ky. Acts ch. 396, sec. 78 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

216.520 Supplementation of residents' rights.

For the purpose of supplementing the rights of residents in long-term-care facilities, such facilities shall take the following actions:

(1) Every long-term-care facility shall conspicuously post throughout the facility a listing of the residents' rights and responsibilities as defined in KRS 216.515 to 216.525.

(2) Every long-term-care facility shall develop and implement a mechanism which will allow each resident and the responsible party or his responsible family member or his guardian to participate in the planning of the resident's care. Each resident shall be encouraged and provided assistance in the planning of his care.

(3) All long-term-care facilities shall establish written procedures for the submission and resolution of complaints and recommendations by the resident and the responsible party or his responsible family member or his guardian. Such policies shall be conspicuously displayed throughout the facility pending approval of their adequacy by the cabinet.

(4) Every long-term-care facility shall prepare a written plan and provide appropriate staff training to implement each of the residents' rights as defined in KRS 216.515 to 216.525.

(5) All long-term-care facilities shall maintain in their facilities one (1) copy of the most recent inspection report as prepared by the Cabinet for Health and Family Services. The cabinet shall provide all long-term-care facilities with one (1) copy of the most recent inspection report.

Effective: June 20, 2005 History: Amended 2005 Ky. Acts ch. 99, sec. 484, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 428, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 280, sec. 5, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 141, sec. 75, effective July 1, 1982. -- Created 1978 Ky. Acts ch. 122, sec. 3, effective June 17, 1978. Note: 1980 Ky. Acts ch. 396, sec. 79 would have amended this

section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

216.525 Cabinet's duties.

For the purpose of supplementing, monitoring and enforcing the rights of residents in long-term care facilities, the cabinet shall take the following actions:

(1) The cabinet shall design and distribute posters to all long-term care facilities which clearly detail how the resident and his responsible family member or his guardian or a visitor may make a written or oral complaint, anonymously if they so choose, to the cabinet in regard to the quality of care given by a particular facility. These posters shall be conspicuously displayed throughout each long-term care facility.

(2) The cabinet shall take appropriate and necessary actions to insure that all of the rights of residents in long-term care facilities as defined by KRS 216.515 to 216.525 are upheld.

Effective: July 1, 1982 History: Amended 1982 Ky. Acts ch. 141, sec. 76, effective July 1, 1982. -- Created 1978 Ky. Acts ch. 122, sec. 4, effective June 17, 1978. Note: 1980 Ky. Acts ch. 396, sec. 80 would have amended this section effective July 1, 1982.

However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

### **Louisiana**

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Subchapter C. Resident Rights §9733.

Statement of Rights and Responsibilities

A. In accordance with R.S. 40:2010.8 et seq., all nursing homes shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement. The statement shall assure each resident the following:

1. the right to civil and religious liberties including, but not limited to, knowledge of available choices; the right to independent personal decision; and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these civil and religious rights;

2. the right to private and uncensored communications including, but not limited to, receiving and sending unopened correspondence; access to a telephone; visitation with any person of the resident's choice; and overnight visitation outside the facility with family and friends in accordance with nursing home policies and physician's orders without the loss of his bed;

a. nursing home visiting hours shall be flexible, taking into consideration special circumstances such as out-of-town visitors and working relatives or friends;

b. with the consent of the resident and in accordance with the policies approved by the Department of Health and Hospitals, the home shall permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure and planning programs, and members of the clergy access to the home during visiting hours for the purpose of visiting with and providing services to any resident;

3. the right to present grievances on behalf of himself or others to the nursing home's staff or administrator, to governmental officials, or to any other person; to recommend changes in policies and services to nursing home personnel; and to join with other residents or

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individuals within or outside the home to work for improvements in resident care, free from restraint, interference, coercion, discrimination or reprisal. This right includes access to the resident's sponsor and the Department of Health and Hospitals; and the right to be a member of, to be active in, and to associate with advocacy or special interest groups;

4. the right to manage his own financial affairs or to delegate such responsibility to the nursing home, but this delegation may be only to the extent of the funds held in trust for the resident by the home. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident and his sponsor, if requested. A copy shall be retained in the resident's records on file in the home;

5. the right to be fully informed, in writing and orally, prior to or at time of admission and during his stay, of services not covered by the basic per diem rates and of bed reservation and refund policies of the home;

6. the right to be adequately informed of his medical condition and proposed treatment, unless otherwise indicated by the resident's physician; to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to be informed of the consequences of such actions;

7. the right to receive adequate and appropriate health care and protective and support services, including services consistent with the resident care plan, with established and recognized practice standards within the community and with rules promulgated by the Department of Health and Hospitals;

8. the right to have privacy in treatment and in caring for personal needs:

a. to have closed room doors, and to have facility personnel knock before entering the room, except in case of an emergency or unless medically contraindicated;

b. to have confidentiality in the treatment of personal and medical records;

c. to be secure in storing and using personal possessions, subject to applicable state and federal health and safety regulations and the rights of other residents; and

d. privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

9. the right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and oral explanations of the services provided by the home, including statements and explanations required to be offered on an as-needed basis;

10. the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by the attending physician for a specified and limited period of time or those necessitated by an emergency:

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth, in writing, the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

11. the right to be transferred or discharged:

a. a resident can be transferred or discharged only if necessary for his welfare and if his needs cannot be met in the facility; his health has improved sufficiently so that he no



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longer needs the services provided by the facility; the safety of individuals in the facility is endangered; the health of individuals in the facility would otherwise be endangered; he has failed, after reasonable and appropriate notice, to pay or have paid for a stay at the facility; or the facility ceases to operate;

b. both the resident and his legal representative or interested family member, if known and available, have the right to be notified, in writing, in a language and manner they understand, of the transfer and discharge. The notice must be given no less than 30 days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency. In facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to 15 days for nonpayment of a bill for a stay at the facility;

c. the resident, or his legal representative or interested family member, if known and available, has the right to appeal any transfer or discharge to the Department of Health and Hospitals, which shall provide a fair hearing in all such appeals;

d. the facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his legal representative or interested family member, if known and available, shall be consulted in choosing another facility if facility placement is required;

12. the right to select a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense; and to obtain information about, and to participate in, community-based activities and programs, unless medically contraindicated, as documented by the attending physician in the resident's medical record, and such participation would violate infection control laws or regulations;

13. the right to retain and use personal clothing and possessions, as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated, as documented by the attending physician in the resident's medical record. Clothing need not be provided to the resident by the home, except in emergency situations. If provided, it shall be of reasonable fit;

14. the right to have copies of the nursing home's rules and regulations and an explanation of the resident's responsibility to obey all reasonable rules and regulations of the nursing home and of his responsibility to respect the personal rights and private property of other residents;

15. the right to be informed of the bed reservation policy for a hospitalization:

a. the nursing home shall inform a private pay resident and his sponsor that his bed shall be reserved for any single hospitalization for a period up to 30 days, provided the nursing home receives reimbursement;

b. notice shall be provided within 24 hours of the hospitalization;

16. the right to receive a prompt response to all reasonable requests and inquiries;

17. the right of the resident to withhold payment for physician visitation if the physician did not examine the resident;

18. the right to refuse to serve as a medical research subject without jeopardizing access to appropriate medical care;

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19. the right to use tobacco, at his own expense, under the home's safety rules and under applicable laws and rules of the state, unless the facility's written policies preclude smoking in designated areas;

20. the right to consume a reasonable amount of alcoholic beverages, at his own expense, unless:

a. not medically advisable, as documented in his medical record by the attending physician; or

b. unless alcohol is contraindicated with any of the medications in the resident's current regime; or

c. unless expressly prohibited by published rules and regulations of a nursing home owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as a part of its religious belief;

21. the right to retire and rise in accordance with his reasonable requests, if he does not disturb others and does not disrupt the posted meal schedules and, upon the home's request, if he remains in a supervised area unless retiring and rising in accordance with the resident's request is not medically advisable, as documented in his medical record by the attending physician;

22. the right to have any significant change in his health status immediately reported to him and his legal representative or interested family member, if known and available, as soon as such a change is known to the home's staff.

B. A sponsor may act on a resident's behalf to assure that the nursing home does not deny the resident's rights under the provisions of R.S. 40:2010.6 et seq., and no right enumerated therein may be waived for any reason whatsoever.

C. Each nursing home shall provide a copy of the statement required by R.S.

40:2010.8(A) to each resident and sponsor upon or before the resident's admission to the home and to each staff member of the home. The statement shall also advise the resident and his sponsor that the nursing home is not responsible for the actions or inactions of other persons or entities not employed by the facility, such as the resident's treating physician, pharmacists, sitter, or other such persons or entities employed or selected by the resident or his sponsor. Each home shall prepare a written plan and provide appropriate staff training to implement the provisions of R.S. 40:2010.6 et seq., including but not limited to, an explanation of the following:

1. the residents' rights and the staff's responsibilities in the implementation of those rights;

2. the staff's obligation to provide all residents who have similar needs with comparable services, as required by state licensing standards.

D. Any violations of the residents' rights set forth in R.S. 40:2010.6 et seq. shall constitute grounds for appropriate action by the Department of Health and Hospitals.

1. Residents shall have a private right of action to enforce these rights, as set forth in R.S. 40:2010.9. The state courts shall have jurisdiction to enjoin a violation of resident's rights and to assess fines for violations, not to exceed \$100 per individual violation.

2. In order to determine whether a home is adequately protecting residents' rights, inspection of the home by the Department of Health and Hospitals shall include private, informal conversations with a sample of residents to discuss residents' experiences within the home with respect to the rights specified in R.S. 40:2010.6 et seq., and with respect to compliance with departmental standards.

E. Any person who submits or reports a complaint concerning a suspected violation of residents' rights or concerning services or conditions in a home or health care facility or who testifies in any administrative or judicial proceedings arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justiciable issue of either law or fact raised by the complaining party.

**Maine**

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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;

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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.

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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.

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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.Q. Transfer and Discharge Rights

#### 10.Q.1. Definition

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Transfer and discharge includes movement of a resident to a bed outside of the certified unit, whether that bed is in the same facility or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified unit.

### 10.Q.2. Transfer and Discharge Requirements

The facility must permit each resident to remain in the unit or facility, and not transfer or discharge the resident from the unit or facility unless:

- a. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the unit or facility.
- b. The transfer or discharge is appropriate because the resident's health and/or functional ability has improved sufficiently so that the resident no longer needs the services provided by the unit or facility.
- c. The safety and/or health of individuals in the facility is endangered.
- d. The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only charges allowable under Medicaid.
- e. The facility ceases to operate.

### 10.Q.3. Notice Before Transfer

Before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the resident, of the transfer or discharge and the reasons.

The resident's clinical record shall contain documentation describing the basis for the transfer or discharge.

### 10.Q.4. Contents of the Notice

Each notice must be written and include, in a language and manner understood by the resident.

- a. In order to provide for informed resident decisions, a nursing facility shall provide lists of licensed providers of care and services for all patients prior to discharge for whom home health care is needed.
  - (1) For all residents requiring home health care, the list must include all licensed home health care providers that request to be listed and any branch offices, including addresses and telephone numbers that serve the area in which the resident resides.
  - (2) The nursing facility shall disclose to the resident any direct or indirect financial interest which the nursing facility has in the home health care provider.
- b. For all residents transferring to another nursing facility, a list must be provided of all nursing facilities that request to be listed that serve the area in which the resident resides or wishes to reside.
- c. The reason for the transfer or discharge, including events which are the basis for such action.
- d. The effective date of the transfer or discharge.
- e. The location to which the resident is transferred or discharged .
- f. Notice of the resident's right to appeal the transfer or discharge as set forth in the Maine Medical Assistance Manual.
- g. The location to which the resident is transferred or discharged.
- h. Notice of the resident's right to appeal the transfer or discharge as set forth in the Maine Medical Assistance Manual.

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- i. The mailing address and telephone number of the Long Term Care Ombudsman Program.
- j. In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocate, Department of Mental Health, Mental Retardation and Substance Abuse Services.
- k. The resident's right to be represented by himself or herself or by legal counsel, a relative, friend or other spokesman.

### 10.Q.5. Timing of the Notice

Except when specified in Chapter 10.Q.2.c., the notice of transfer or discharge must be made by the facility at least

- a. Thirty (30) days before the resident is transferred or discharged.
- b. As soon as practicable before transfer or discharge when:
  - 1. The safety and/or health of individuals in the facility would be endangered.
  - 2. The resident's health improves sufficiently to allow a more immediate transfer or discharge.
  - 3. An immediate transfer or discharge is required by the resident's urgent medical needs, or
  - 4. A resident has not resided in the facility for thirty (30) days.

### 10.Q.6. Appeal of Transfer or Discharge

The resident has the right to appeal a transfer or discharge to the Administrative Hearings Unit of the Department.

### 10.Q.7. Transfer or Discharge Orientation

The resident has the right to receive sufficient preparation and orientation to ensure safe and orderly transfer or discharge from the facility. This shall be documented in the resident record.

### 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.

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Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

Chapter 09 Residents' Bill of Rights: Comprehensive Care Facilities and Extended Care Facilities

Authority: Health-General Article, §§19-343—19-347 and 19-349—19-352, Annotated Code of Maryland

10.07.09.04

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.04 Admission Procedures and Requirements.

A. At the time of admission of a resident, and whenever information changes during the resident's stay, the nursing facility shall notify the resident and, when applicable, a representative or interested family member, in writing and orally, in a language that is easily understood of all terms of admission including, but not limited to the:

- (1) Residents' Bill of Rights;
- (2) Nursing facility's policies and procedures that implement the Residents' Bill of Rights;
- (3) Rules of resident responsibility;
- (4) Nursing facility's complaint procedure;
- (5) Nursing facility's visitation rules;
- (6) Procedures for obtaining a determination from the Medical Assistance Program of the amount of the resident's funds available to pay for the cost of the resident's care;
- (7) Procedures for establishing eligibility for Medicaid and for receiving refunds for previous private payments covered by these benefits, including the right to request an assessment under 42 U.S.C. §1396r(5)(c) for the purpose of determining the:
  - (a) Extent of a couple's nonexempt resources at the time of institutionalization, and
  - (b) Amount of a couple's resources to be attributed to the community spouse as the spouse's equitable share of resources which are not considered available for payment toward the cost of the institutionalized spouse's medical care or for determining Medicaid eligibility for the institutionalized spouse; and
- (8) Resident's rights under State law to formulate advance directives.

B. Upon admission of a resident, a nursing facility shall:

- (1) Document in the resident's clinical record whether the resident has executed an advance directive and, if an advance directive exists, keep a copy of the advance directive in:
  - (a) The resident's clinical record, or
  - (b) A location within the nursing facility which is accessible to appropriate administrative, nursing, and medical personnel on a 24-hour a day basis;
- (2) Prepare an inventory of all property that the resident is bringing into the nursing facility;
- (3) Request the resident or representative to identify:
  - (a) Those items with a value of \$100 or more,
  - (b) Any damage to an item existing before admission of the resident, and
  - (c) Whether the resident is retaining possession of each item or is entrusting the item to the nursing facility for safekeeping on behalf of the resident;
- (4) Give to the resident and, when applicable, the resident's representative or interested family member, a copy of the inventory prepared under §B(2) of this regulation; and
- (5) Advise the resident and, when applicable, a representative or interested family member:
  - (a) Whether the nursing facility has purchased insurance to cover a resident's tangible personal property for loss or damage due to the facility's negligence, and
  - (b) Of the limits of insurance coverage.

C. With information provided by the resident or representative, a nursing facility shall periodically update the inventory of the resident's personal property with respect to items having a value of \$100 or more.

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D. Required Notification. A nursing facility shall notify in writing:

(1) A resident who is entitled to Medicaid benefits at the time of admission, or when the resident becomes eligible for benefits, of:

- (a) Items and services that are included in the per diem rate under Medicaid, and for which the resident may not be charged;
- (b) Other items and services that the nursing facility offers and for which the resident may be charged, and the current range of charges for each item and service;
- (c) The nursing facility's obligation following admission to notify the resident and, when applicable, the agent or interested family member, of any changes made to the items and services for which the resident may or may not be charged;
- (d) The fact that the resident may not be required to pay for an item or service not covered by Medicaid unless the:

(i) Resident or, when applicable, the agent, knowingly requests the item or service, and

(ii) Resident receives the item or service; and

(e) The resident's right, within 90 days of receiving an item or service, to request an itemized statement of charges that:

(i) Briefly and clearly describes each item or service, the amount charged for it, and the identity of the payer billed for the service, and

(ii) Contains a statement in bold and conspicuous print as to when interest may be assessed consistent with Regulation .05B(8) of this chapter;

(2) A private-pay resident, or the resident's agent, of:

(a) The items and services included in the nursing facility's basic per diem rate;

(b) The items and services that are covered by Medicare, and of the amount of any copayments or deductibles;

(c) Other services that the nursing facility offers and for which the resident may be charged, and the current range of charges for the services, including but not limited to charges related to a resident's monthly drug regimen review and other non-drug-related pharmacy costs;

(d) Whether the costs for supplies used in the performance of a service are included in the service charge and the costs of these supplies, within 24 hours of request, when the costs are not included in the service charge; and

(e) The resident's right, within 90 days of receiving an item or service or within 30 days of payment, to request an itemized statement of charges that:

(i) Briefly and clearly describes each item or service, the amount charged for it, and the identity of the payer billed for the service, and

(ii) Contains a statement in bold and conspicuous print as to when interest may be assessed consistent with Regulation .05B(8) of this chapter; and

(3) A resident of changes to be made to the items and services specified in §D(1) and (2) of this regulation, and increases in any fee or charge, or a new fee or charge, or a change in billing procedures, at least 45 days before the increase, new charge, or change becomes effective.

E. A nursing facility shall:

(1) Give the resident a copy of the statement of items, services, and charges provided by the facility;

(2) Provide information regarding services to be rendered by other health care providers, including:

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- (a) The cost to the resident,
- (b) Transportation arrangements, and
- (c) Direct or indirect financial interests that the nursing facility has in the provider.

10.07.09.05

.05 Admission Prohibitions.

A. The acts in §B of this regulation are admission prohibitions.

B. A nursing facility may not:

- (1) Require or solicit, as a condition of admission into the nursing facility, the signature of an individual other than the applicant on the application or contract for admission to the nursing facility, unless the:
  - (a) Applicant is adjudicated disabled in accordance with Estates and Trusts Article, §13-701, Annotated Code of Maryland, or
  - (b) Applicant's physician determines that the applicant is incapable of understanding or exercising the applicant's rights and responsibilities and records, in the applicant's nursing facility record, the specific reasons for the determination;
- (2) Require an individual, including an agent, to incur personal financial liability by signing the contract, although the nursing facility may require the individual to pay for nursing facility care for the resident to the extent of the resident's available income and assets;
- (3) Charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under Medicaid, a gift, money, donation, or other consideration as a precondition of admission or expedited admission to, or continued stay in, the nursing facility;
- (4) Require residents or applicants to waive their rights to Medicare or Medicaid;
- (5) Require oral or written assurances that residents or applicants are not eligible for, or will not apply for, Medicare or Medicaid benefits;
- (6) Charge individuals who are eligible for Medicaid more than the rates established by the Medical Assistance Program for these services;
- (7) Increase any charge and make the resident liable for the increase until the 46th day after the facility notifies the resident in writing;
- (8) Impose an interest penalty on charges for items and services provided to a resident until the later of the following:
  - (a) 45 days after the nursing facility mails an itemized statement of charges to the resident or the resident's agent, or
  - (b) 30 days after the end of the period covered by the itemized statement of charges;
- (9) Condition providing care or otherwise discriminate against a resident based on whether the resident has or has not executed an advance directive;
- (10) Except for contributions toward cost of care as determined by the Medical Assistance Program, charge a resident who is eligible for Medicaid for services, unless the resident or the resident's agent knowingly has requested and received noncovered services, and the nursing facility:
  - (a) Has given proper notice of the availability and cost of the services to residents, and
  - (b) Does not condition the resident's admission or continued stay on the request for and receipt of additional services; and
- (11) Solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or an individual related to the resident or applicant unless the nursing

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facility makes clear that the contribution is not a condition of admission to, expedited admission to, or continued stay in the nursing facility.

10.07.09.06

.06 Admission Contract Required.

A. Before or upon admission, a nursing facility and applicant or, when applicable, the applicant's agent, shall execute an admission contract which has been approved by the Department.

B. If the Department has approved a model contract, a nursing facility shall include within its contract, at a minimum, all of the provisions of the model contract.

C. The nursing facility shall carefully explain all clauses of the contract and answer all questions that the applicant, the applicant's agent, and any interested family member may have.

D. Except as required in §B of this regulation, the applicant and, when applicable, an agent, have the right to delete clauses or sections of the contract with which they do not agree, or to add clauses or sections, subject to the nursing facility's concurrence.

Substantive changes require the Department's approval.

E. An admission contract shall include a statement regarding the nursing facility's policies if private funds are exhausted during the resident's stay, including, in clear and concise language, any restrictions with respect to the acceptance of third-party payments.

F. An admission contract used by a certified Medicaid provider shall clearly state that if private funds are exhausted during the resident's stay, and Medicaid payment is available, the nursing facility shall accept Medicaid payments on behalf of the resident.

G. An admission contract used by a certified Medicaid provider shall inform the applicant, through a form established by the Department, that medical eligibility is a requirement for Medical Assistance, and that the applicant should learn if the applicant meets the Medicaid eligibility requirement at the time of admission.

10.07.09.07

.07 Third-Party Signature on Admission Contract.

A. If a facility requires an individual, other than the applicant or resident, to sign the admission contract, the conditions of Regulation .05B(1) of this chapter shall be met.

B. If an agent, as defined in Regulation .02B(3) of this chapter, signs the contract, the agent accepts responsibility to pay for the cost of the resident's care only to the extent of the resident's available funds and assets.

C. If an agent, as defined in Regulation .02B(3) of this chapter, signs the contract, the agent is not, by signing the contract, accepting any responsibility for making payments from the agent's own personal funds, unless the agent does so voluntarily. The facility shall list separately in the contract any obligations voluntarily entered into by the agent, and the agent shall initial these obligations on the contract.

D. An agent who has not paid a current obligation for the resident's care may apply to the Medical Assistance Program for a determination of the funds available to pay for the cost of the resident's care.

E. An agent shall distribute any funds, including income or assets of the applicant or resident that the Medical Assistance Program has determined to be available, to pay for the cost of the resident's care in the facility.

F. An agent shall seek, on behalf of the applicant or resident, all assistance from the Medical Assistance Program that may be available to the applicant or resident.

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G. The Attorney General may impose civil money penalties against an agent who wilfully or with gross negligence violates the requirements of this regulation as follows:

(1) An agent who willfully or with gross negligence violates §E of this regulation is subject to a civil money penalty not less than the amount of funds subject to the violation; and

(2) An agent who willfully or with gross negligence violates §F of this regulation is subject to a civil money penalty not exceeding \$10,000.

10.07.09.08

.08 Resident's Rights and Services.

A. A nursing facility shall provide care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect, and in full recognition of the resident's individuality.

B. A nursing facility may not interfere with a resident's exercise of rights guaranteed under the Constitution or laws of the United States and Maryland.

C. A resident has the right to:

(1) Reside and receive services in a nursing facility with reasonable accommodations of individual needs and preferences, except when accommodations would endanger the health or safety of the resident or other residents;

(2) Receive treatment, care, and services that are in an environment that promotes maintenance or enhancement of each resident's quality of life;

(3) A dignified existence, self-determination, and communication with and access to individuals and services inside and outside the nursing facility;

(4) Be free of interference, coercion, discrimination, or reprisal from the nursing facility when exercising the resident's rights;

(5) Be free from:

(a) Physical abuse;

(b) Verbal abuse;

(c) Sexual abuse;

(d) Physical or chemical restraints imposed for purposes of discipline or convenience;

(e) Mental abuse; and

(f) Involuntary seclusion;

(6) Choose an attending physician, if the physician agrees to abide by nursing facility policies and procedures, and the regulations in this chapter;

(7) Choose a pharmacy to obtain medications as set forth in COMAR 10.07.02.15B(3) and D(3);

(8) Be fully informed in advance about care and treatment, and of proposed changes in that care or treatment;

(9) Participate in planning care and treatment, or changes in care or treatment;

(10) Seek advice from the resident care advisory committee concerning the options for medical care and treatment for an individual with a life-threatening condition in accordance with Health-General Article, §19-370 et seq., Annotated Code of Maryland;

(11) Consent to or refuse treatment, including the right to accept or reject artificially administered sustenance in accordance with State law;

(12) Self-administer drugs if the interdisciplinary team determines that the practice is safe;

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- (13) Access the resident's records within 24 hours, excluding weekends and holidays, upon an oral or written request;
- (14) Purchase copies of all or part of the resident's records upon request by giving 2 working days advance notice to the nursing facility;
- (15) Approve or refuse the release of personal and clinical records to an individual outside the nursing facility unless:
  - (a) Otherwise provided by Health-General Article, §4-301 et seq., Annotated Code of Maryland; or
  - (b) The release is required by law;
- (16) Personal privacy, including:
  - (a) Confidentiality of personal records; and
  - (b) Privacy in:
    - (i) Medical treatment, and
    - (ii) Personal care;
- (17) Privacy in the resident's room, including the right to have nursing facility staff knock before entering the resident's room;
- (18) Privacy in written communication, including the right to:
  - (a) Send and receive mail promptly without it being opened by anyone other than the resident, except when the resident requests assistance; and
  - (b) Have access to stationery, postage, and writing implements at the resident's own expense;
- (19) Reasonable access to the private use of a telephone;
- (20) Meet or visit privately with any individual the resident chooses, subject to reasonable restrictions by the nursing facility on visiting hours and places;
- (21) Visit or meet privately with the following, to whom the nursing facility shall provide reasonable access:
  - (a) A representative of the Secretary of the U.S. Department of Health and Human Services;
  - (b) A representative of the Department;
  - (c) The resident's personal physician;
  - (d) A representative of the State Long-Term Care Ombudsman Program;
  - (e) The agency responsible for advocacy and protection of developmentally disabled and mentally ill individuals in Maryland; or
  - (f) Any other legal representative;
- (22) Visit privately with the resident's spouse;
- (23) Consent or deny consent to all visits, and may deny or withdraw consent at any time;
- (24) Examine the results of the most recent federal and State surveys, including the annual survey and any subsequent complaint investigations, not otherwise prohibited by law, of the nursing facility and any plans of correction prompted by these surveys;
- (25) Receive notice before the resident's roommate is changed and, to the extent possible, have input into the choice of roommate;
- (26) Voice grievances, including those about treatment or care that is or fails to be furnished, and recommend changes in policies and services, to the staff or administrator of the nursing facility, the Licensing and Certification Administration, the Office on Aging, or any other person, without fear of reprisal, restraint, interference, coercion, or discrimination;

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- (27) Prompt efforts by the nursing facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;
- (28) Contact and receive information from agencies acting as client advocates;
- (29) Refuse to perform services for the nursing facility;
- (30) Perform services for the nursing facility if the resident chooses, only if:
  - (a) The nursing facility has documented the need or desire for work in the plan of care;
  - (b) The plan specifies the nature of the services to be performed and whether the services are voluntary or paid;
  - (c) Compensation for paid services is at or above prevailing rates; and
  - (d) The resident agrees in writing to the work arrangement described in the plan of care, and the contract is part of the resident's record;
- (31) Share a room with the resident's spouse if both spouses consent and it is not medically contraindicated; and
- (32) Participate in social, religious, and community activities if the activities do not interfere with the rights of other residents in the nursing facility.

D. A resident has the right to participate or refuse to participate in experimental research. When the resident is incapable of making this decision, the resident's appropriate representative may consent for participation in therapeutic experimental research only.

E. The resident or, when applicable, the resident's health care representative, has the right to be fully informed, in a language that the resident or representative can reasonably be expected to understand, of complete and current information about the resident's diagnosis, treatment, and prognosis, unless it would be medically inadvisable as documented by the resident's attending health care provider. If this determination has been made, the health care provider shall, upon written request:

- (1) Make a summary of the undisclosed portion of the medical record available to the resident or health care representative;
- (2) Insert a copy of the summary in the medical record of the resident;
- (3) Permit examination and copying of the medical record by another health care provider; and
- (4) Inform the resident or health care representative of the resident's or health care representative's right to select another health care provider.

F. Resident and Family Groups.

- (1) A resident has the right to organize and participate in resident groups in the nursing facility.
- (2) A resident's family has the right to meet in the nursing facility with the families of other residents.
- (3) Staff or other visitors may attend meetings only at the group's invitation.

10.07.09.09

.09 Implementation of Residents' Bill of Rights.

A nursing facility shall:

A. Ensure that:

- (1) The rights of residents as set forth in the Residents' Bill of Rights are protected, including but not limited to informing each resident of the resident's right to select a physician and pharmacy of the resident's choice;
- (2) Employees of the nursing facility are trained to:



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- (a) Respect and enforce the Residents' Bill of Rights and the nursing facility's policies and procedures that implement the Residents' Bill of Rights, and
- (b) Protect the rights of residents;
- (3) The nursing facility's policies and procedures implement all rights of the residents as set forth in:
  - (a) Health-General Article, §§19-343—19-347 and 19-349—19-352, Annotated Code of Maryland,
  - (b) Title XIX of the Social Security Act,
  - (c) 42 CFR §483.10 et seq., and
  - (d) The regulations of this chapter; and
- (4) The nursing facility's policies comply with the requirements of federal and State law concerning advance directives, including but not limited to:
  - (a) If an applicant is incapacitated or is incapable of informing the nursing facility whether the applicant has executed an advance directive, the facility may provide advance directive information to the resident's health care representative, and
  - (b) Once the resident is no longer incapacitated, the facility shall provide the advance directive information to the resident directly at the appropriate time;
- B. Post conspicuously in a public place accessible to residents:
  - (1) The Residents' Bill of Rights in large, clearly readable type;
  - (2) The nursing facility's complaint procedures in large, clearly readable type;
  - (3) The nursing facility's statement of deficiencies for the most recent survey and any subsequent complaint investigations conducted by federal or State surveyors and any plans of correction in effect with respect to the survey or complaint investigation findings; and
  - (4) Signs provided by the Department to notify the visiting public and residents:
    - (a) That complaints may be made to the Department or to the Office,
    - (b) How to report an instance of abuse of a resident to the Department, the Office, or law enforcement agencies, and
    - (c) How to file a complaint with State agencies and client advocacy agencies, such as the Licensing and Certification Administration, the Office on Aging, the Older Americans Act Legal Services providers, the Maryland Disabilities Law Center, State Medicaid Fraud Unit, and the Legal Aid Bureau, Inc.;
- C. Establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals, regardless of source of payment;
- D. Provide each resident and, if applicable, the resident's appropriate representative or interested family member, with a written description of the resident's legal rights, including a:
  - (1) Description of the manner of protecting resident funds; and
  - (2) Statement that the resident may file a complaint with the Department or the Office concerning resident abuse, neglect, misappropriation of resident property in the nursing facility, and noncompliance with advance directive requirements;
- E. Place the name, address, and telephone number of the physician who is responsible for the resident's care within easy access of the resident;

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F. Inform the resident and the appropriate legal representative, or interested family member, and promptly consult with the resident's physician if any of the following incidents occur:

- (1) An accident involving the resident which results in injury;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the nursing facility;

G. Consistent with State and federal confidentiality laws and, in a timely manner, notify a resident and, if applicable, the resident's representative or interested family member, of any:

- (1) Change in condition;
- (2) Adverse event that may result in a change in condition;
- (3) Outcome of care that results in an unanticipated consequence; and
- (4) Corrective action, if any;

H. Notify the resident and, when applicable, the appropriate representative, or interested family member, when there is a change in:

- (1) Room or roommate assignment;
- (2) The Residents' Bill of Rights; or
- (3) Federal or State law and regulations relating to residents' rights;

I. Record and update the address and phone number of the resident's representatives and interested family members;

J. Permit representatives of the State Long-Term Care Ombudsman Program to accomplish their responsibilities, as set forth in 42 U.S.C. §3058g, the State Long-Term Care Ombudsman Program;

K. Encourage the activities of resident and family groups by:

- (1) Providing the residents and their families with private space for meetings;
- (2) Designating a staff person to provide assistance and respond to written requests from residents and their families;
- (3) Listening to the views of residents and their families;
- (4) Acting upon the grievances and recommendations of residents and their families concerning proposed policy and operational decisions affecting resident care and life in the nursing facility; and
- (5) Advising resident and family groups of the disposition of their grievances and recommendations;

L. Educate staff, residents, representatives, and interested family members on advance directives;

M. When applicable, promptly provide the Medical Assistance Program with all required information in its possession; and

N. Provide copies of clinical records upon request, based on the following charges:

- (1) A fee for copying and mailing not exceeding 50 cents per page;
- (2) A discretionary fee not to exceed \$15 for record retrieval and preparation;
- (3) The actual cost of postage and handling of the copies; and
- (4) A discretionary annual adjustment in the fees described in §M(1)—(3) of this regulation based on the current Consumer Price Index.

10.07.09.10

.10 Resident Transfers and Discharges.

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A. A nursing facility may not involuntarily transfer or discharge a resident from the nursing facility unless the:

- (1) Transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;
- (2) Transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the health care or services provided by the nursing facility;
- (3) Resident's presence endangers the health or safety of other individuals in the nursing facility;
- (4) Resident has failed, after reasonable and appropriate notice, to pay, or to have paid under third-party payers, for a stay at the nursing facility; or
- (5) Nursing facility ceases to operate or, in the case of a resident who receives Medicare or Medicaid services, when the nursing facility has been decertified or has withdrawn from the Medicare or Medicaid Program.

B. A resident has a right to request a hearing on the proposed transfer or discharge, except when the transfer or discharge is being taken pursuant to §A(5) of this regulation.

C. Notice.

(1) Transfer and Discharge. Except in emergency situations such as a hospitalization, or if the resident has not resided in the facility for 30 days, the nursing facility shall notify the resident, representative, or interested family member, the State Long-Term Care Ombudsman, and the Department at least:

- (a) 30 days before any proposed transfer or discharge if the nursing facility is not part of a continuing care retirement community as defined in Article 70B, Annotated Code of Maryland; or
- (b) 60 days before any proposed transfer or discharge if the nursing facility is part of a continuing care retirement community.

(2) Emergency Transfers, Discharges, and Relocations. In an emergency situation, a nursing facility shall notify the resident, representative, or interested family member of a transfer as soon as possible.

D. Contents of Notice. The required notice to a resident under this regulation shall be on a form developed by the Department and shall include:

- (1) Each reason for the proposed transfer or discharge;
- (2) A statement that the resident has the right to request a hearing on a proposed transfer or discharge, and how to request a hearing pursuant to Regulation .13 of this chapter, except in the case of a discharge made pursuant to §A(5) of this regulation;
- (3) The name, address, and telephone number of the State's Office on Aging and local office on aging long-term care ombudsman;
- (4) The right of a resident to consult with any lawyer the resident chooses;
- (5) The name, address, and telephone number of the Legal Aid Bureau, The Older American Act Senior Legal Assistance Programs, and other agencies that may provide assistance to individuals who need legal counsel;
- (6) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals;

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(7) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals;

(8) The effective date of the proposed transfer or discharge which, except as set forth in §C of this regulation, is at least 30 days after receiving the notice and at least 60 days after receipt of the notice if the nursing facility is part of a continuing care retirement center; and

(9) The resident's rights concerning discharge, as set forth in Regulation .11 of this chapter.

E. Documentation.

(1) In the event of a discharge or transfer of a resident, a nursing facility shall ensure that the following appears in the resident record:

(a) The circumstances surrounding the discharge or transfer, including interventions initiated by the facility before proposing the discharge;

(b) The notice described in C and D of this regulation; and

(c) If applicable, any express consent given by the resident or, when applicable, the resident's representative.

(2) When a resident is transferred or discharged pursuant to §A(1) and (2) of this regulation, the resident's physician shall document in the resident's clinical records the reason or reasons why the transfer or discharge is necessary.

(3) When a resident is transferred or discharged pursuant to §A(3) of this regulation, a physician shall document in the resident's clinical records the reason or reasons why the transfer or discharge is necessary.

10.07.09.11

.11 Involuntary Discharge or Transfer of a Resident.

A. In addition to the provisions of Regulation .10 of this chapter, a facility may not involuntarily discharge or transfer a resident unless, within 48 hours before the discharge or transfer, the facility has:

(1) Provided or obtained:

(a) A comprehensive medical assessment and evaluation of the resident, including a physical examination, that is documented in the resident's medical record,

(b) A post-discharge plan of care for the resident that is developed, if possible, with the participation of the resident's representative, and

(c) Written documentation from the resident's attending physician indicating that the transfer or discharge is in accordance with the post-discharge plan of care and is not contraindicated by the resident's medical condition; and

(2) Provided information to the resident concerning the resident's rights to make decisions concerning health care, including the right to:

(a) Accept or refuse medical treatment,

(b) Make an advance directive, including the right to make a living will and the right to appoint an agent to make health care decisions, and

(c) Revoke an advance directive.

B. With the exception of residents of a certified continuing care facility as set forth in §D of this regulation, at the time of transfer or discharge, the facility shall provide the resident and, when appropriate, the representative or interested family member with:

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- (1) A written statement of the medical assessment and evaluation and post-discharge plan of care required under §A of this regulation;
- (2) A written statement itemizing the medications currently being taken by the resident;
- (3) To the extent permitted under federal and State law, at least a 3-day supply of the medications currently being taken by the resident;
- (4) Information necessary to assist the resident or the resident's representative in obtaining additional prescriptions for necessary medication through consultation with the resident's attending physician; and
- (5) A written statement containing the date, time, method, mode, and destination of the resident's discharge.

C. A facility may not discharge or transfer a resident:

- (1) Unless the resident or appropriate representative consented in writing to the discharge or transfer; or
- (2) Except when the discharge or transfer:
  - (a) Is in accordance with a post-discharge plan of care developed under §A of this regulation;
  - (b) Is to a safe and secure environment where the resident will be under the care of a:
    - (i) Licensed, certified, or registered care provider, or
    - (ii) Person who has agreed in writing to provide a safe and secure environment.

D. A continuing care facility certified under Article 70B, Annotated Code of Maryland, is not subject to §B of this regulation if the:

- (1) Facility transfers a resident to a lesser level of care within the same facility in accordance with a contract between the facility and the resident; and
- (2) Transfer is approved by the resident's attending physician.

E. If the requirements of A-----D of this regulation have been met, the resident's representative, in conjunction with the facility, shall cooperate and assist in the resident's discharge planning, including:

- (1) Contacting, cooperating with, and assisting other health care facilities considering admitting the resident; and
- (2) Cooperating with government agencies, including applying for Medical Assistance for the resident.

F. If requested by a person during the process of transferring or discharging a resident, or on its own initiative, the Office of the Attorney General may investigate whether an abuse of a resident's funds contributed to the decision to transfer or discharge the resident, and may make appropriate referrals of the matter to other government agencies.

G. The Secretary may impose a civil money penalty not to exceed \$10,000 for each:

- (1) Violation by a facility of its obligations under this regulation and Regulation .10 of this chapter; or
- (2) Willfully or grossly negligent violation by a resident's representative of the representative's obligations under this regulation and Regulation .10 of this chapter.

H. If a civil money penalty is imposed under §G of this regulation, the facility or representative has the right to request a hearing on the proposed civil money penalty in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 10.01.04.

I. A resident, resident's representative, resident's attorney, or the Attorney General, on behalf of a resident who believes that an involuntary discharge or transfer that violates

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this regulation is imminent or has taken place, may request appropriate injunctive relief from the appropriate circuit court.

10.07.09.12

.12 Resident Relocation and Bed Hold.

A. Except in emergency situations, a nursing facility shall notify a resident or, when applicable, the resident's representative or interested family member, if available, in writing 5 days before the resident is relocated unless the resident agrees to the relocation and this is documented in the resident's record.

B. A resident's right to refuse a change in room assignment under §A of this regulation does not affect the resident's eligibility or entitlement to Medicaid benefits.

C. Notice.

(1) Notice of Bed-Hold Policy at the Time of Admission. At the time of admission, a nursing facility shall provide written information to a resident or, when applicable, the resident's representative or interested family member, describing the facility's bed-hold policy, including the period of time during which the resident is permitted to return and resume residence in the nursing facility.

(2) Notice of Bed-Hold Policy at Time of Transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility shall provide a written notice to the resident, or when applicable, the resident's representative or interested family member, which specifies the duration of the bed-hold policy described in §C of this regulation.

D. Permitting a Resident to Return to the Nursing Facility. When a resident's hospitalization or therapeutic leave exceeds the bed-hold period under the State Medicaid plan, the resident has a right to be readmitted to the nursing facility immediately upon the first availability of a bed in a semiprivate room if the resident:

(1) Requires the services provided by the nursing facility; and

(2) Is eligible for Medicaid coverage for the nursing facility's services.

E. Unless the bed hold has expired, for purposes of this regulation, transfer includes the refusal of a nursing facility to accept the return of a resident who was previously transferred from the nursing facility:

(1) Whose bed at the nursing facility was continuously reserved or required to be reserved through payment to the nursing facility from any source; or

(2) Who had an application for medical assistance pending at the time of the transfer if there is no reason to believe that the application will not be approved.

F. Transfer and Discharge Planning. In addition to the requirements of Regulation .11 of this chapter, a nursing facility shall provide, in all cases, orientation and planning to residents to ensure safe and orderly transfer of discharge from the nursing facility.

10.07.09.13

.13 Hearings for Transfers and Discharges, and Establishment of an Escrow Account.

A. A resident may request a hearing within 30 days of receiving a notice of an intended involuntary transfer or discharge as provided in Regulation .10C of this chapter,

B. Except in an emergency or when the resident has resided in a facility for less than 30 days, after a request for a hearing has been filed, a nursing facility may not discharge or transfer the resident until:

(1) A final decision is issued after the hearing and all requirements of Regulation .11 of this chapter are met; or

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(2) The resident consents to the discharge or transfer and withdraws the request for a hearing.

C. Procedure.

(1) The resident shall send a written request for a hearing to the Office of Administrative Hearings by the 30th calendar day after the resident receives the nursing facility's notice of the proposed transfer or discharge.

(2) After receiving the written request, the Office of Administrative Hearings shall schedule a hearing.

(3) The Office of Administrative Hearings shall conduct the hearing in accordance with COMAR 10.01.04 and 28.02.01.

(4) The Department is not a party to a hearing conducted pursuant to this regulation. The parties are the nursing facility and the resident. Therefore, a hearing conducted pursuant to this regulation is not a contested case as defined in the Administrative Procedure Act, State Government Article, §10-202, Annotated Code of Maryland.

D. A facility may require that an escrow account be established when the:

(1) Basis for a resident's discharge is nonpayment; and

(2) Resident continues to reside in the facility pending a final decision.

E. If an escrow account is required under §D of this regulation, the facility shall develop a policy and procedure that is acceptable to the Department concerning the establishment and disposition of funds from the escrow account.

10.07.09.14

.14 Physical and Chemical Restraints.

A. Physical restraints may be used only:

(1) As an integral part of an individual medical treatment plan;

(2) If absolutely necessary to protect the resident or others from injury;

(3) If prescribed by a physician or administered by another health care professional practicing within the scope of their license; and

(4) If less restrictive alternatives were considered and appropriately ruled out by the physician.

B. Use of Physical Restraints.

(1) When a facility uses physical restraints, personnel:

(a) Trained in the use of restraints shall check a resident in restraint at least every 2 hours, and maintain a record of the checks and usage; and

(b) Shall provide opportunities for motion and exercise during each 2-hour period in which physical restraint is used, and shall monitor the use of the restraint use and maintain a record of it.

(2) The attending physician shall ensure that treatment plans include provisions for the progressive elimination of physical restraints.

C. Use of Psychopharmacologic Drugs. When a physician prescribes psychopharmacologic drugs for a resident, the resident's clinical records shall contain all of the following documentation:

(1) A physician's indication that the dosage, duration, indication, and monitoring are clinically appropriate and the reasons why they are clinically appropriate;

(2) Indication that the resident is being monitored for adverse complications of the drug therapy;

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- (3) Confirmation that previous attempts at dosage reduction have been unsuccessful, if applicable;
- (4) Evidence of the resident's subjective or objective improvement, or maintenance or function, while taking the medication;
- (5) Evidence that the resident's decline or deterioration, if applicable, has been evaluated by the interdisciplinary team to determine whether a particular drug, a particular dosage, or duration of therapy may be the cause;
- (6) Evidence of why the resident's age, weight, or other factors would require a unique drug dose, drug duration, indication, or monitoring; or
- (7) Other evidence that substantiates the use of the restraint.

10.07.09.15

.15 Abuse of Residents.

A. A nursing facility shall develop and implement policies and procedures prohibiting abuse and neglect of residents.

B. A nursing facility may not knowingly employ an individual who has been convicted of abusing or neglecting a resident or who has had a finding entered into the State Nurse Aide Registry concerning abuse or neglect of a resident or misappropriation of a resident's property.

C. Reports of Abuse.

(1) A person who believes that a resident has been abused shall promptly report the alleged abuse to the:

- (a) Appropriate law enforcement agency;
- (b) Licensing and Certification Administration within the Department; or
- (c) The Office on Aging.

(2) An employee of a nursing facility who believes that a resident has been abused:

- (a) Shall report the alleged abuse as set forth in §C(1) of this regulation within 3 days after learning of the alleged abuse;
- (b) May be subject to a penalty imposed by the Secretary of up to \$1,000 for failing to report an alleged abuse within 3 days after learning of the alleged abuse.

(3) An individual on whom a penalty has been imposed may request a hearing on the penalty by submitting a written request for a hearing to the Department on or before the 30th calendar day after the individual received notice of the imposition of the penalty.

(4) Upon receiving a request for a hearing under this section, the Secretary shall conduct a hearing in accordance with COMAR 10.01.03.

D. Investigations. A nursing facility shall:

- (1) Thoroughly investigate all allegations of abuse; and
- (2) Take appropriate action to prevent further incidents of abuse while the investigation is in progress, and after that.

E. Immunity from Civil Liability. An individual who, acting in good faith, makes a report under this regulation has immunity from liability described in Health-General Article, §19-347(g), Annotated Code of Maryland.

10.07.09.16

.16 Complaint Procedure.

A. A resident, the resident's representative, or an interested individual has the right to:

- (1) Make a complaint about the nursing facility;
- (2) Recommend a change in facility policy and procedure; and



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(3) Be free from reprisal, restraint, interference, coercion, or discrimination by the nursing facility or its employees as a result of making a complaint or recommending a change in policy.

B. A nursing facility shall develop and implement the following complaint procedures:

(1) A resident, the resident's representative, or an interested individual may present complaints to:

- (a) The nursing facility administration,
- (b) The nursing facility's staff,
- (c) The Office,
- (d) The Department, or
- (e) Other persons or groups;

(2) A complaint may be made to the nursing facility in person, orally or in writing, by telephone or by mail, and may be reported anonymously;

(3) A nursing facility may not require the signature of the resident or, when applicable, the resident's representative or an interested individual on a complaint;

(4) If a complaint is presented to a nursing facility, the nursing facility shall investigate within 30 days the allegations made in the complaint and advise the complainant of the action the nursing facility is taking to resolve the complaint;

(5) A nursing facility shall send to the Office and the Department a copy of any complaint that a complainant indicates has not been resolved to the satisfaction of the complainant;

(6) A nursing facility shall maintain a permanent record for inspection by the Office or the Department of all complaints concerning the nursing facility; and

(7) A complainant may request a hearing from the Department within 30 days of receiving the facility's response to the complaint or within 60 days of filing the complaint, whichever is earlier.

C. A complaint which has not been resolved to the satisfaction of the complainant may be resolved through a hearing as follows:

(1) After receiving a written request for a hearing, the Department shall forward a copy of the request to the Office and schedule a hearing;

(2) The nursing facility may be represented by the nursing facility administrator, designee, or counsel;

(3) The complainant may be represented by:

- (a) The complainant,
- (b) The Office,
- (c) Counsel, or
- (d) Any other individual;

(4) The Department's Director of Licensing and Certification, or a designee of the Director, shall conduct the hearing;

(5) The Director or the Director's designee may:

- (a) Receive testimony from both parties,
- (b) If appropriate, issue deficiencies and require the nursing facility to submit a plan of correction,
- (c) Attempt to assist the parties in reaching a satisfactory resolution,
- (d) Notify the complainant of the results of the findings and any actions taken, and
- (e) Notify the appropriate State's attorney if there is evidence of criminal conduct.

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D. A hearing conducted under §C of this regulation is not a contested case as defined in State Government Article, §10-202, Annotated Code of Maryland.

10.07.09.17

.17 Personal Property of Residents.

A. Personal Possessions.

(1) A resident has the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless to do so would be detrimental to the rights or health and safety of other residents.

(2) A facility shall take reasonable steps to ensure the safety and security of the personal belongings of its residents.

(3) A facility shall provide a reasonable amount of locked storage space for personal property upon the request of a resident.

B. A nursing facility may not limit the amount of funds it keeps on behalf of a resident, but may limit the amount of other property that it retains on behalf of the resident.

C. A nursing facility shall establish written procedures to prevent loss or damage to, and protect property.

D. A nursing facility shall establish written procedures for investigating an incident of loss or damage to the property of a resident, including:

(1) A procedure by which an individual, including a resident or representative of a resident, may report loss or damage;

(2) The designation of an employee of the nursing facility to:

(a) Receive reports of loss or damage,

(b) Conduct an investigation, and

(c) Inform the resident, or when applicable, a representative or interested family member, of the results of the investigation.

E. Release of Personal Property. A nursing facility shall release the property of a resident to:

(1) The resident or a representative upon the:

(a) Request of the resident, or

(b) Transfer or discharge of the resident from the nursing facility; or

(2) A government agency acting pursuant to legal authority.

F. Disposition of Personal Property Upon the Death of a Resident.

(1) Immediately upon but not later than 30 business days after the death of a resident, a nursing facility shall provide notice of the resident's property being held by the facility to:

(a) The resident's representative or interested family member; and

(b) Government agencies which have paid any part of the nursing facility charges for the resident.

(2) Upon the death of a resident, the nursing facility shall release:

(a) The resident's wearing apparel other than furs and jewels to a representative or immediate family member; and

(b) Other personal property only to an individual who presents certified letters of administration that designate the individual as "Representative of the Estate of \_\_\_\_\_".

(3) Personal property or income derived from the cash conversion of personal property that a facility holds for a discharged or deceased resident is presumed abandoned in

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accordance with Commercial Law Article, Title 17, Annotated Code of Maryland, when the property or income from cash conversion is not claimed within 1 year.

(4) When a nursing facility is still holding a resident's personal property 1 year after the resident's death, the nursing facility shall notify the Unclaimed Property Section, Comptroller of the Treasury, for appropriate direction.

10.07.09.18

.18 Protection of a Resident's Personal Funds.

A. A resident has the right to:

- (1) Manage the resident's financial affairs; or
- (2) Choose any person who is willing to handle the resident's financial affairs.

B. Except as authorized by being appointed representative payee, a nursing facility may not manage a resident's funds without an express written request from:

- (1) The resident; or
- (2) An agent who has legal authority to make decisions regarding the resident's funds.

C. Management of Personal Funds. Upon written authorization of a resident or agent, a nursing facility shall hold, safeguard, manage, and account for the resident's personal funds that are deposited with the nursing facility as specified in this regulation.

D. Personal Funds in Excess of \$50. A nursing facility shall:

(1) Deposit a resident's personal funds in excess of \$50 in an interest-bearing account that is:

(a) Established and maintained by the facility under one of the following terms:

- (i) In the name of the resident only,
  - (ii) In the name of the facility "in trust for" or as the "trustee" for the individual resident, or
  - (iii) In a residents' pooled account, with a separate accounting for each resident's share;
- and

(b) Located in a financial institution whose accounts are insured by the:

- (i) Federal Deposit Insurance Corporation (FDIC),
- (ii) Federal Savings and Loan Insurance Corporation (FSLIC), or
- (iii) Other insurer approved by the Department; and

(c) Separate from any of the nursing facility's operating accounts; and

(2) Credit all interest earned to the resident's account at least quarterly.

E. Personal Funds Less Than \$50. A nursing facility may maintain a resident's personal funds that do not exceed \$50 in a petty cash fund or a non-interest-bearing account that is identified as a residents' account.

F. Establishment of Resident Accounts. When a nursing facility manages a resident's financial affairs, the nursing facility shall establish and maintain a system that:

(1) Ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing facility; and

(2) Precludes any commingling of resident funds with the nursing facility funds.

G. For all resident funds entrusted to a nursing facility, the facility shall:

(1) Establish and maintain adequate fire and theft coverage to protect a resident's funds that are on the premises of the nursing facility; and

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(2) Otherwise ensure the security of all residents' personal funds deposited with the nursing facility by purchasing a surety bond with the State as obligee on behalf of the nursing facility residents.

H. Limitation on Charges to Personal Funds. A nursing facility may not:

(1) Impose a charge against a resident's personal funds for:

- (a) An item or service for which payment is made under Medicare or Medicaid, and
- (b) A cost or fee incurred by the facility for establishing and servicing the resident's accounts; or

(2) Use a Medicaid resident's personal funds to offset a contribution of care debt unless authorized by the resident, the resident's agent, or a court.

10.07.09.19

.19 Records of Resident Personal Funds.

A. Records. For all resident funds entrusted to a nursing facility, the facility shall:

(1) Maintain an individual record for the funds of each resident, which includes the following information regarding each fund transaction:

- (a) The date of the transaction,
- (b) The type of transaction, whether it is a deposit, withdrawal, or any other transaction,
- (c) When the transaction is a withdrawal or deposit, reference to a numbered receipt, and
- (d) The balance of funds after the completion of the transaction;

(2) At least weekly, post to the record of the funds all deposits, withdrawals, and other transactions;

(3) Furnish each resident or, when applicable, the resident's agent or interested family member, with a quarterly statement of the resident's individual account not later than 30 days after the end of each quarter;

(4) Make available for inspection by the resident or, when applicable, the resident's agent or interested family member, a monthly statement of the resident's account; and

(5) Make available at the nursing facility, for audit by the Department and the Office, records pertaining to each resident's funds.

B. Receipts of Transactions.

(1) If a transaction involves a transfer of funds between a resident and a second party, or between the nursing facility and the institution in which the resident's account is located, the nursing facility or financial institution shall:

(a) Provide a receipt or copy of a receipt to the resident, or retain the resident's copy of the receipt as part of the resident's individual financial record; and

(b) Maintain the original receipt and make it available for audit.

(2) Except as provided in §B(3) of this regulation, a nursing facility shall require that each receipt for withdrawal of funds from a resident's account be signed by the resident or, when applicable, the resident's agent.

(3) A nursing facility may allow a resident to withdraw money from the resident's account without signing a receipt only if the nursing facility documents that the resident is not disabled but is incapable of signing due to a physical disability.

(4) Except as set forth in Regulation .18H(2) of this chapter, a nursing facility may withdraw money from a resident's account without written authorization of the resident or, when applicable, the resident's agent, if the:

(a) Nursing facility documents that the resident is incapable of understanding the resident's rights and responsibilities regarding finances;

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- (b) Resident's agent is unavailable; and
- (c) Withdrawal of funds is for an item or service needed for the resident's direct and immediate benefit and the facility maintains documentation that the withdrawal was used for that purpose.

(5) A withdrawal under §B(4) of this regulation requires witness signatures of two facility employees authorized by the facility administrator.

C. Availability of Funds.

(1) A resident has the right to access funds entrusted to the nursing facility:

- (a) During normal business hours, if the funds are held within the facility; or
- (b) Within 3 banking days, if a bank, the State treasurer, or a county or municipal treasurer holds the money.

(2) When a nursing facility transfers or discharges a resident, the nursing facility shall either:

- (a) Request and follow the resident's written instructions for transferring the money;
- (b) Return, upon the resident's or, when applicable, the resident's agent's demand, the resident's money that the nursing facility has in its possession and have the resident or agent sign a receipt for the money; or
- (c) Make available to the resident or the resident's agent, within 3 banking days, the resident's money which is in an account with a bank, the State treasurer, or county or municipal treasurer.

D. Notice of Balances. A nursing facility shall provide written notification to a resident who receives Medicaid benefits:

- (1) As specified in §1611(a)(3)(B) of the Social Security Act when the amount in the resident's account reaches \$200 less than the Supplemental Security Income (SSI) resource limit for one individual; and
- (2) That, when the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one individual, the resident may lose eligibility for Medicaid or SSI.

E. Death of a Resident. Upon the death of a resident for whom a nursing facility is holding funds, the nursing facility shall notify the resident's agent or interested family member and:

- (1) Convey within 30 days a final accounting of the resident's personal funds which are deposited with the nursing facility;
- (2) Transfer, pursuant to the resident's preexisting burial contract, an amount not to exceed the outstanding unpaid balance of the contract, or the total of the resident's funds entrusted to the nursing facility, whichever is less;
- (3) Release the resident's funds only to an individual who presents certified letters of administration that designate the person as "Representative of the Estate of \_\_\_\_\_"; and

(4) When the nursing facility is still in possession of a resident's funds 1 year after the resident's death, the facility shall report all money it holds for the former resident to the Unclaimed Property Section, Comptroller of the Treasury.

10.07.09.20

.20 Misuse of Resident's Funds.

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A. A person may not misappropriate a resident's assets or income, including spending the resident's assets or income against or without the resident or resident's agent's consent, except as permitted by Regulation .19B(4) of this chapter.

B. A person who believes that there has been an abuse of a resident's funds may make a complaint to the:

- (1) Local department of social services;
- (2) Director of the Office on Aging if the resident is 65 years old or older; or
- (3) Director of the Licensing and Certification Administration, regardless of the resident's age.

10.07.09.9999

Administrative History

Effective date: December 30, 1977 (4:27 Md. R. 2107)

Regulations .01—.03 amended effective December 16, 1985 (12:25 Md. R. 2472).

Regulation .02K and .03K adopted effective August 30, 1982 (9:17 Md. R. 1708)

Regulation .03C amended effective August 30, 1982 (9:17 Md. R. 1708)

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Regulations .01—.03 under COMAR 10.07.09 Patients' Bill of Rights: Comprehensive Care Facilities and Extended Care Facilities repealed and new Regulations .01—.20 under COMAR 10.07.09 Residents' Bill of Rights: Comprehensive Care Facilities and Extended Care Facilities adopted effective April 22, 1996 (23:8 Md. R. 605)

Regulation .02B amended effective January 5, 2004 (30:26 Md. R. 1914)

Regulation .09 amended effective January 5, 2004 (30:26 Md. R. 1914)

**Massachusetts**

Purchased 05.10.07

Massachusetts does not address Resident Rights as a separate section in its regulations. The excerpts shown below are in the Massachusetts statutes under "Administration."

150.002: Administration

(E) The administrator shall establish procedures for the notification of the patient, the next of kin or sponsor in the event of a significant change in a patient's or resident's charges, billings, benefit status and other related administrative matters.

(1) The administrator shall establish provisions for the safekeeping of personal effects, funds and other property brought to the facility by patients or residents except, when necessary for the protection of valuables and to avoid unreasonable responsibility, the administrator may require that such valuables be excluded or removed from the premises.

(2) If the facility assumes the responsibility for safekeeping of patients' or residents' possessions and valuables, an accurate, written record of all funds, valuables and possessions and a list of all deposits and withdrawals shall be maintained. A receipt for all items placed in safekeeping and for all deposits and withdrawals shall be provided to the patient or resident, his next of kin or sponsor.

If the facility assumes the responsibility for managing a patient's or resident's funds, such funds shall be placed in an insured interest bearing account with the clear written understanding that the facility has only a fiduciary interest in the funds of this account.

The account may be either individual or collective at the election of the facility and shall

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be deposited at the prevailing market rate of interest for deposits in Massachusetts and shall conform to the requirements associated with the particular account.

(a) All the interest earned by any such funds so deposited shall be credited to each patient or resident.

(b) For individual accounts, the interest earned must be prorated to each patient or resident on an actual interest earned basis.

(c) The interest earned on any collective account must be prorated to each patient or resident on the basis of his or her end of quarter or nearest end of the month balance.

(d) The facility may keep a portion of a patient's or resident's money in a personal needs petty cash fund. The amount kept in this petty cash fund shall not be greater than the limit set by Department of Public Welfare regulations 106 CMR 456.804(3) and must be administered in accordance with 106 CMR 456.804(3). The personal needs petty cash fund shall not be co-mingled with any operational petty cash fund the facility may maintain nor shall it be used for facility operational expenses. A record of money spent for each patient or resident shall be kept.

(e) No fee or other charges shall be applied to any individual patient or resident for such managing of funds or distribution of interest.

(f) The facility shall provide the patient or resident or his/her sponsor with an account report every three months of financial transactions made in his/her behalf.

(g) In the event of discharge of a patient or resident, except if the patient's or resident's bed is being held for anticipated readmission, all funds of that patient or resident shall be returned to the patient or resident or to the patient's or resident's family or sponsor with a written accounting in exchange for a signed receipt. Funds which are maintained outside of the facility shall be returned within ten business days.

(h) In the event of death of a patient or resident, the facility shall provide a complete accounting of that patient's or resident's funds to the patient's or resident's family or sponsor.

(3) A statement of all funds, valuables and possessions shall be prepared on admission, transfer or discharge and shall be verified, dated and signed by the patient or resident, his next of kin or sponsor and by a witness. A copy of the list shall be given to the patient or resident, or his next of kin or sponsor.

(4) The admission of a patient or resident to a long-term care facility and his presence therein shall not confer on the facility or its owner, administrator, employees or representatives authority to manage, use or dispose of any property (except drugs) of such patient or resident without written, signed permission to do so by the patient or resident, his next of kin or sponsor.

(5) The name, address and the phone number of the next of kin or sponsor in charge of each patient's or resident's affairs shall be kept readily available in the patient's or resident's chart. The designated individual shall be contacted immediately in an emergency or in the case of any serious incident, fire or severe illness involving the patient or resident. Such notification shall be recorded in writing in the clinical record.

**Michigan**

Downloaded 05.15.07

Resident Rights

2) The policy describing the rights and responsibilities of patients or residents required under subsection (1) shall include, as a minimum, all of the following:

(a) A patient or resident shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment.

(b) An individual who is or has been a patient or resident is entitled to inspect, or receive for a reasonable fee, a copy of his or her medical record upon request. A third party shall not be given a copy of the patient's or resident's medical record without prior authorization of the patient or resident.

(c) A patient or resident is entitled to confidential treatment of personal and medical records, and may refuse their release to a person outside the health facility or agency except as required because of a transfer to another health care facility or as required by law or third party payment contract.

(d) A patient or resident is entitled to privacy, to the extent feasible, in treatment and in caring for personal needs with consideration, respect, and full recognition of his or her dignity and individuality.

(e) A patient or resident is entitled to receive adequate and appropriate care, and to receive, from the appropriate individual within the health facility or agency, information about his or her medical condition, proposed course of treatment, and prospects for recovery, in terms that the patient or resident can understand, unless medically contraindicated as documented by the attending physician in the medical record.

(f) A patient or resident is entitled to refuse treatment to the extent provided by law and to be informed of the consequences of that refusal. If a refusal of treatment prevents a health facility or agency or its staff from providing appropriate care according to ethical and professional standards, the relationship with the patient or resident may be terminated upon reasonable notice.

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(g) A patient or resident is entitled to exercise his or her rights as a patient or resident and as a citizen, and to this end may present grievances or recommend changes in policies and services on behalf of himself or herself or others to the health facility or agency staff, to governmental officials, or to another person of his or her choice within or outside the health facility or agency, free from restraint, interference, coercion, discrimination, or reprisal. A patient or resident is entitled to information about the health facility's or agency's policies and procedures for initiation, review, and resolution of patient or resident complaints.

(h) A patient or resident is entitled to information concerning an experimental procedure proposed as a part of his or her care and has the right to refuse to participate in the experimental procedure without jeopardizing his or her continuing care.



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(i) A patient or resident is entitled to receive and examine an explanation of his or her bill regardless of the source of payment and to receive, upon request, information relating to financial assistance available through the health facility or agency.

(j) A patient or resident is entitled to know who is responsible for and who is providing his or her direct care, is entitled to receive information concerning his or her continuing health needs and alternatives for meeting those needs, and to be involved in his or her discharge planning, if appropriate.

(k) A patient or resident is entitled to associate and have private communications and consultations with his or her physician, attorney, or any other person of his or her choice and to send and receive personal mail unopened on the same day it is received at the health facility or agency, unless medically contraindicated as documented by the attending physician in the medical record. A patient's or resident's civil and religious liberties, including the right to independent personal decisions and the right to knowledge of available choices, shall not be infringed and the health facility or agency shall encourage and assist in the fullest possible exercise of these rights. A patient or resident may meet with, and participate in, the activities of social, religious, and community groups at his or her discretion, unless medically contraindicated as documented by the attending physician in the medical record.

(l) A patient or resident is entitled to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized in writing by the attending physician for a specified and limited time or as are necessitated by an emergency to protect the patient or resident from injury to self or others, in which case the restraint may only be applied by a qualified professional who shall set forth in writing the circumstances requiring the use of restraints and who shall promptly report the action to the attending physician. In case of a chemical restraint, a physician shall be consulted within 24 hours after the commencement of the chemical restraint.

(m) A patient or resident is entitled to be free from performing services for the health facility or agency that are not included for therapeutic purposes in the plan of care.

(n) A patient or resident is entitled to information about the health facility or agency rules and regulations affecting patient or resident care and conduct.

(o) A patient or resident is entitled to adequate and appropriate pain and symptom management as a basic and essential element of his or her medical treatment.

(3) The following additional requirements for the policy described in subsection (2) apply to licensees under parts 213 and 217:

(a) The policy shall be provided to each nursing home patient or home for the aged resident upon admission, and the staff of the facility shall be trained and involved in the implementation of the policy.

(b) Each nursing home patient may associate and communicate privately with persons of his or her choice. Reasonable, regular visiting hours, which shall be not less than 8 hours per day, and which shall take into consideration the special circumstances of each visitor, shall be established for patients to receive visitors. A patient may be visited by the patient's attorney or by representatives of the departments named in section 20156, during other than established visiting hours. Reasonable privacy shall be afforded for visitation of a patient who shares a room with another patient. Each patient shall have reasonable access to a telephone. A married nursing home patient or home for the aged resident is entitled to meet privately with his or her spouse in a room that assures privacy. If both

spouses are residents in the same facility, they are entitled to share a room unless medically contraindicated and documented by the attending physician in the medical record.

(c) A nursing home patient or home for the aged resident is entitled to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other patients or residents, or unless medically contraindicated as documented by the attending physician in the medical record. Each nursing home patient or home for the aged resident shall be provided with reasonable space. At the request of a patient, a nursing home shall provide for the safekeeping of personal effects, funds, and other property of a patient in accordance with section 21767, except that a nursing home is not required to provide for the safekeeping of a property that would impose an unreasonable burden on the nursing home.

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(d) A nursing home patient or home for the aged resident is entitled to the opportunity to participate in the planning of his or her medical treatment. A nursing home patient shall be fully informed by the attending physician of the patient's medical condition unless medically contraindicated as documented by a physician in the medical record. Each nursing home patient shall be afforded the opportunity to discharge himself or herself from the nursing home.

(e) A home for the aged resident may be transferred or discharged only for medical reasons, for his or her welfare or that of other residents, or for nonpayment of his or her stay, except as provided by title XVIII or title XIX. A nursing home patient may be transferred or discharged only as provided in sections 21773 to 21777. A nursing home patient or home for the aged resident is entitled to be given reasonable advance notice to ensure orderly transfer or discharge. Those actions shall be documented in the medical record.

(f) A nursing home patient or home for the aged resident is entitled to be fully informed before or at the time of admission and during stay of services available in the facility, and of the related charges including any charges for services not covered under title XVIII, or not covered by the facility's basic per diem rate. The statement of services provided by the facility shall be in writing and shall include those required to be offered on an as-needed basis.

(g) A nursing home patient or home for the aged resident is entitled to manage his or her own financial affairs, or to have at least a quarterly accounting of personal financial transactions undertaken in his or her behalf by the facility during a period of time the patient or resident has delegated those responsibilities to the facility. In addition, a patient or resident is entitled to receive each month from the facility an itemized statement setting forth the services paid for by or on behalf of the patient and the services rendered by the facility. The admission of a patient to a nursing home does not confer on the nursing home or its owner, administrator, employees, or representatives the authority to manage, use, or dispose of a patient's property.

(h) A nursing home patient or a person authorized by the patient in writing may inspect and copy the patient's personal and medical records. The records shall be made available

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for inspection and copying by the nursing home within a reasonable time, not exceeding 1 week, after the receipt of a written request.

(i) If a nursing home patient desires treatment by a licensed member of the healing arts, the treatment shall be made available unless it is medically contraindicated, and the medical contraindication is justified in the patient's medical record by the attending physician.

(j) A nursing home patient has the right to have his or her parents, if a minor, or his or her spouse, next of kin, or patient's representative, if an adult, stay at the facility 24 hours a day if the patient is considered terminally ill by the physician responsible for the patient's care.

(k) Each nursing home patient shall be provided with meals that meet the recommended dietary allowances for that patient's age and sex and that may be modified according to special dietary needs or ability to chew.

(l) Each nursing home patient has the right to receive representatives of approved organizations as provided in section 21763. (4) A nursing home, its owner, administrator, employee, or representative shall not discharge, harass, or retaliate or discriminate against a patient because the patient has exercised a right protected under this section.

(5) In the case of a nursing home patient, the rights enumerated in subsection (2) (c), (g), and (k) and subsection (3) (d), (g), and (h) may be exercised by the patient's representative.

(6) A nursing home patient or home for the aged resident is entitled to be fully informed, as evidenced by the patient's or resident's written acknowledgment, before or at the time of admission and during stay, of the policy required by this section. The policy shall provide that if a patient or resident is adjudicated incompetent and not restored to legal capacity, the rights and responsibilities set forth in this section shall be exercised by a person designated by the patient or resident. The health facility or agency shall provide proper forms for the patient or resident to provide for the designation of this person at the time of admission.

(7) This section does not prohibit a health facility or agency from establishing and recognizing additional patients' rights.

(8) As used in this section:

(a) "Patient's representative" means that term as defined in section 21703.

(b) "Title XVIII" means title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28, 1395x to 1395yy, and 1395bbb to 1395ggg.

(c) "Title XIX" means title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

333.20202 Responsibilities of patient or resident.

Sec. 20202.

(1) A patient or resident is responsible for following the health facility rules and regulations affecting patient or resident care and conduct.

(2) A patient or resident is responsible for providing a complete and accurate medical history.

(3) A patient or resident is responsible for making it known whether he or she clearly comprehends a contemplated course of action and the things he or she is expected to do.

- (4) A patient or resident is responsible for following the recommendations and advice prescribed in a course of treatment by the physician.
- (5) A patient or resident is responsible for providing information about unexpected complications that a rise in an expected course of treatment.
- (6) A patient or resident is responsible for being considerate of the rights of other patients or residents and health facility personnel and property.
- (7) A patient or resident is responsible for providing the health facility with accurate and timely information concerning his or her sources of payment and ability to meet financial obligations. History: 1978, Act 368, Eff. Sept. 30, 1978.  
Popular name: Act 368

### Minnesota

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#### 4658.0200 POLICIES CONCERNING RESIDENTS.

Subpart 1. Visitors. A nursing home must provide access to a resident by relatives and guardians, and to any entity or individual that provides health, social, legal, advocacy, or religious services to the resident, subject to the resident's right to deny or withdraw consent at any time. A nursing home must also provide access to others who are visiting the resident with the resident's consent. A nursing home may restrict visits when the visits pose a health or safety risk to a resident or otherwise violate a resident's rights.

Subp. 2. Telephones. A nursing home must provide at least one non-coin-operated telephone which is accessible to residents at all times in case of emergency. A resident must have access to a telephone at a convenient location within the building for personal use. A nursing home may charge the resident for actual long distance charges that the resident incurs.

Subp. 3. Mail. A resident must receive mail unopened unless the resident or the resident's legal guardian, conservator, representative payee, or other person designated in writing by the resident has requested in writing that the mail be reviewed. The outgoing mail must not be censored.

Subp. 4. Funds and possessions. A nursing home may not handle the personal major business affairs of a resident without written legal authorization by the resident or the resident's legal guardian, conservator, representative payee, or other person designated in writing by the resident.

Subp. 5. Smoking in bed. A resident must not be permitted to smoke in bed unless the resident's condition requires that the resident remain in bed, and the smoking is directly supervised by a staff member.

Subp. 6. Permitted smoking. Smoking is permitted in the nursing home only as provided by Minnesota Statutes, sections [16B.24](#), subdivision 9, and [144.411](#) to [144.417](#).

Subp. 7. Pet animals. Pet animals may be kept on the premises of a nursing home only according to part [4638.0200](#).

STAT AUTH: MS s [144A.04](#); [144A.08](#)

HIST: 21 SR 196

Current as of 01/19/05

**Mississippi**

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**101.14 Licensed Facility Representative:** For the purposes of regulations governing informal dispute resolutions, the term "licensed facility representative" shall mean an employee of the licensed facility (i.e., including, but not limited to, administrator, assistant administrator, director of nursing, director of social services, and others), as designated by the administrator of the licensed facility.

**101.31 Resident.** The term "resident" is synonymous with patient.

**101.32 Restraint.** The term "restraint" shall include any means, physical or chemical, which is intentionally used to restrict the freedom of movement of a person.

**116 RESIDENTS RIGHTS**

**116.01 General.** The facility shall maintain written policies and procedures regarding the rights and responsibilities of residents. These written policies and procedures shall be established in consultation with residents or responsible parties. Written policies and procedures regarding residents' rights shall be made available to residents or their guardian, next of kin, sponsoring agency or agencies, or lawful representative and to the public. There shall be documented evidence that the staff of the facility is trained and involved in the implementation of these policies and procedures. In-service on residents' rights and responsibilities shall be conducted annually. These rights and responsibilities shall be posted throughout the facility for the benefit of all staff and residents.

**116.02 Residents' Rights.** The residents' rights policies and procedures ensure that each resident admitted to the facility:

1. is fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission and during stay, of these rights and is given a statement of the facility's rules and regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents;
2. is fully informed, and is given a written statement prior to or at time of admission and during stay, of services available in the facility, and of related charges including any charges for services covered by the facility's basic per diem rate;
3. is assured of adequate and appropriate medical care, is fully informed by a physician or nurse practitioner of his medical conditions unless medically contraindicated (as documented by a physician or nurse practitioner in his medical record), is afforded the opportunity to participate in the planning of his medical treatment, to refuse to participate in experimental research, and to refuse medication and treatment after fully informed of and understanding the consequences of such action;
4. is transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay (except as prohibited by sources of third-party payment), and is given a two weeks advance notice in writing to ensure orderly transfer or discharge. A copy of this notice is maintained in his medical record;

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5. is encouraged and assisted, throughout his period of stay, to exercise his rights as a resident and as a citizen, and to this end may voice grievances, has a right of action for damages or other relief for deprivations or infringements of his right to adequate and proper treatment and care established by an applicable statute, rule, regulation or contract, and to recommend changes in policies and services to facility staff and/or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;
6. may manage his personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law;
7. is free from mental and physical abuse;
8. is free from restraint except by order of a physician or nurse practitioner, or unless it is determined that the resident is a threat to himself or to others. Physical and chemical restraints shall be used for medical conditions that warrant the use of a restraint. Restraint is not to be used for discipline or staff convenience. The facility must have policies and procedures addressing the use and monitoring of restraint. A physician order for restraint must be countersigned within 24 hours of the emergency application of the restraint;
9. is assured security in storing personal possessions and confidential treatment of his personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in the case of his transfer to another health care institution, or as required by law of third-party payment contract;
10. is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
11. is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
12. may associate and communicate privately with persons of his choice, may join with other residents or individuals within or outside of the facility to work for improvements in resident care, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);
13. may meet with, and participate in activities of, social, religious and community groups at his discretion, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);
14. may retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);

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15. if married, is assured privacy for visits by his/her spouse; if both are inpatients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician or nurse practitioner in the medical record); and

16. is assured of exercising his civil and religious liberties including the right to independent personal decisions and knowledge of available choice. The facility shall encourage and assist in the fullest exercise of these rights.

All rights and responsibilities specified in paragraph (1) through (16) of Section 116.02, as they pertain to (1) a resident adjudicated incompetent in accordance with State law, (2) a resident who is found by his physician or nurse practitioner to be medically incapable of understanding these rights, or (3) a resident who exhibits a communication barrier, devolve to and shall be exercised by the resident's guardian, next of kin, sponsoring agencies, or representative payee (except when the facility is representative payee).

### **3. Provisions for Privacy.**

a. Existing Facilities. Cubicle curtains, screening, or other suitable provisions for privacy shall be provided in multi-bed resident bedrooms.

b. Initial Licensure, New Construction, Additions and Renovations. Cubicle curtains, screening, or other suitable provisions for privacy shall be provided in multi-bed resident bedrooms. Cubicle curtains shall completely enclose the bed from three (3) sides.

**4. Accommodations for Residents.** The minimum accommodations for each resident shall include:

a. Bed. The resident shall be provided with either an adjustable bed or a regular single bed, according to needs of the resident, with a good grade mattress at least four (4) inches thick. Beds shall be single except in case of special approval of the licensing agency. Cots and roll-a-way beds are prohibited for resident use. Full and half bed rails shall be available to assist in safe care of residents.

b. Pillows, linens, and necessary coverings.

c. Chair.

d. Bedside cabinet or table.

e. Storage space for clothing, toilet articles, and personal belongings including rod for clothes hanging.

f. Means at bedside for signaling attendants.

g. Bed pans or urinals for residents who need them.

h. Over-bed tables as required.

**5. Bed Maximum.** Bedrooms in new facilities shall be limited to two (2) beds.

### **118.06 Toilet and Bathing Facilities.**

1. Lavatory, toilet and bathing facilities shall be provided in each nursing unit as follows:

a. Bathing Facilities 2 per nursing unit

b. Combination toilet and lavatory 2 per nursing unit

2. As a minimum, showers shall be thirty (30) inches by sixty (60) inches without curbing.

3. Handrails shall be provided for all tubs, showers, and commodes.

4. In addition to the requirements set forth above, a lavatory shall be provided in each resident bedroom or in a toilet room that is directly accessible from the bedroom.

5. In addition to the requirements set forth above, a toilet shall be located in a room directly accessible from each resident bedroom. The minimum area for a room containing only a toilet shall be three (3) feet by six (6) feet.

### **119 REQUIREMENTS FOR ADMISSION**

**119.01 Physical Examination Required.** Each resident shall be given a complete physical examination 30 days prior to admission and annually thereafter, including a history of tuberculosis exposure and an assessment for signs and symptoms of tuberculosis, by a licensed physician or nurse practitioner. The findings shall be entered as part of the Admission Record. The report of the examination shall include:

1. Medical history (previous illnesses, drug reaction, emotional reactions, etc.).
2. Major physical and mental condition.
3. Current diagnosis.
4. Orders, dated and signed, by a physician or nurse practitioner for the immediate care of the resident to include medication treatment, activities, and diet.

### **119.02 Admission Requirements to rule out active tuberculosis (TB)**

1. The following are to be performed and documented within 30 days prior to the resident's admission to the nursing home:
  - a. A TB signs and symptoms assessment by a licensed physician or nurse practitioner and
  - b. A chest x-ray taken and have a written interpretation.
2. Admission to the facility shall be based on the results of the required tests as follows:
  - a. Residents with an abnormal chest x-ray and/or signs and symptoms assessment shall have the first step of a two-step Mantoux tuberculin skin test (TST) placed and read by certified personnel within 30 days prior to the patient's admission to the nursing home. Evaluation for active TB shall at the recommendation of the MDH and shall be prior to admission. If TB is ruled out and the first step of the TST is negative the second step of the two-step TST shall be completed and documented within 10-21 days of admission. TST administration and reading shall be done by certified personnel.
  - b. Residents with a normal chest x-ray and no signs or symptoms of TB shall have a baseline TST performed with the initial step of a two-step Mantoux TST placed on or within 30 days prior to, the day of admission. The second step shall be completed within 10-21 days of the first step. TST administration and reading shall be done by certified personnel.
    - i. Residents with a significant TST upon baseline testing or prior significant TST shall be monitored regularly for signs and symptoms of active TB (cough, sputum production, chest pain, fever, weight loss, or night sweats, especially if the symptoms have lasted longer than three weeks) and if these develop shall have an evaluation for TB per the recommendations of the MDH within 72 hours. (See Section 119.02 (2a))
    - ii. Residents with a non significant TST upon baseline testing shall have an annual Mantoux TST within thirty (30) days of the anniversary of their last TST.
    - iii. Residents with a new significant TST on annual testing shall be evaluated for active TB by a nurse practitioner or physician.



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c. Active or suspected Active TB Admission. If a resident has or is suspected to have active TB, prior written approval for admission to the facility is required from the MDH TB State Medical Consultant.

d. Exceptions to TST requirement may be made if:

i. Resident has prior documentation of a significant TST.

ii. Resident has received or is receiving an MSDH approved treatment regimen for latent TB infection or active disease.

iii. Resident is excluded by a licensed physician or nurse practitioner due to medical contraindications.

**119.03 Transfer to another long term facility or return of a resident to respite care** shall be based on the above tests (Section 119.02 (2)) if done within the past 12 months and the patient has no signs and symptoms of TB.

**119.04 Transfer to a Hospital or Visit to a Physician Office.** If a resident has signs or symptoms of active TB (i.e., is a TB suspect) the licensed facility shall notify the MSDH, the hospital, transporting staff and the physician's office prior to transferring the resident to a hospital. Appropriate isolation and evaluation shall be the responsibility of the hospital and physician. If a resident has or is suspected to have active TB, prior written approval for admission or readmission to the facility is required from the MSDH TB State Consultant.

## **120 RESIDENT CARE**

**120.01 Service Beyond Capability of the Home.** Whenever a resident requires hospitalization or medical, nursing, or other care beyond the capabilities and facilities of the home, prompt effort shall be made to transfer the patient/resident to a hospital or other appropriate medical facility.

**120.02 Activities of daily living.** Each resident shall receive assistance as needed with activities of daily living to maintain the highest practicable well being. These shall include, but not be limited to:

1. Bath, dressing and grooming;
2. Transfer and ambulate;
3. Good nutrition, personal and oral hygiene; and
4. Toileting.

**120.03 Pressure sores.** Residents with a pressure sore shall receive necessary treatment and service to promote healing and prevent the development of new pressure sores. Residents without pressure sores will not develop pressure sores unless the residents' clinical condition indicates they were unavoidable.

**120.04 Urinary incontinence.** Residents with urinary incontinence shall be assessed for need of bladder retraining program. An indwelling catheter will not be used unless the resident's clinical condition indicates that catheterization is necessary. These residents shall receive treatment and services to prevent urinary tract infections.

**120.05 Range of motion.** Residents with limited range of motion shall receive treatment and services to increase range of motion or prevent further decline in range of motion.

**120.06 Mental and psycho-social.** A resident who displays adjustment difficulty receives appropriate treatment and services to address the assessed problem.

**120.07 Gastric feeding.** Residents who are eating alone or with assistance are not fed by a gastric tube unless their clinical condition indicates that the use of a gastric feeding tube is unavoidable. The residents who are fed by a gastric tube receive the treatment and services to prevent complications or to restore if possible, normal eating skills.

**120.08 Accidents.** The facility shall ensure that the residents' environment remains as free of accident hazards as possible, and adequate supervision shall be provided to prevent accidents. If an unexplained accident occurs, this injury must be investigated and reported to appropriate state agencies.

**120.09 Nutrition.** Residents shall maintain acceptable parameters of nutritional status, such as body weight and protein levels, unless residents' clinical condition indicates that this is unavoidable. All residents shall receive diets as orders by their physician or nurse practitioner. Residents identified with significant nutritional problems shall receive appropriate medical nutrition therapy based on current professional standards.

**120.10 Hydration.** Each resident shall be provided sufficient fluid intake to maintain proper hydration and health.

**120.11 Special needs.** Each resident with special needs shall receive proper treatment and care. These special needs shall include, but are not limited to injections; parenteral and enteral fluids; colostomy, ureterostomy, ileostomy care; tracheostomy care; tracheal suction; respiratory care; foot care; and prostheses.

## **121 PHYSICIAN SERVICES**

**121.01 General.** A physician shall personally approve in writing a recommendation that an individual be admitted to a facility.

**121.02 Designated physician.** Each resident shall have a designated physician or nurse practitioner who is responsible for their care. In the absence of the designated physician or nurse practitioner, another physician or nurse practitioner shall be designated to supervise the resident medical care.

**121.03 Emergency physician.** The facility shall arrange for the provision of physician or nurse practitioner services twenty-four (24) hours a day in case of an emergency.

**121.04 Physician visit.** The resident shall be seen by a physician or nurse practitioner every sixty (60) days.

## **122 REHABILITATIVE SERVICES**

**122.01 Rehabilitative services.** Residents shall be provided rehabilitative services as needed upon the written orders of an attending physician or nurse practitioner.

1. The therapies shall be provided by a qualified therapist.
2. Appropriate equipment and supplies shall be provided.
3. Each resident's medical record shall contain written evidence that services are provided in accordance with the written orders of an attending physician or nurse practitioner.

2. Dining area. A dining area shall be provided in facilities adequate to set at least three-fourths of the maximum capacity of the facility. The dining area may also be used for social, recreational, and/or religious services when not in use as a dining facility. A minimum of fifteen (15) square feet per person for three-fourths (3/4) of the capacity of the facility shall be provided.

**126.05 Special Activities Area.** Each facility should provide space for hobbies and activities that cannot be included in a day room, living room, or recreational room.

**126.06 Outside Area.** Adequate outside space should be provided for the use of residents in favorable weather.

Minimum Standards of Operation for the Aged or Infirm Health Facilities Licensure and Certification

SECTION H -- Residents Rights

408.1

General. The facility shall maintain written policies and procedures regarding the rights and responsibilities of residents. These written policies and procedures shall be established in consultation with residents or responsible parties. Written policies and procedures regarding residents' rights shall be made available to residents or their guardian, next of kin, sponsoring agency or agencies, or lawful representative and to the public. There shall be documented evidence that the staff of the facility is trained and involved in the implementation of these policies and procedures. Inservice on residents' rights and responsibilities shall be conducted annually. These rights and responsibilities shall be posted throughout the facility for the benefit of all staff and residents.

408.2

Residents' Rights. The residents' rights policies and procedures ensure that each resident admitted to the facility:

- a. is fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission and during stay, of these rights and is given a statement of the facility's rules and regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents;
- b. is fully informed, and is given a written statement prior to or at time of admission and during stay, of services available in the facility, and of related charges including any charges for services covered by the facility's basic per diem rate;
- c. is assured of adequate and appropriate medical care, is fully informed by a physician or nurse practitioner of his medical conditions unless medically contraindicated (as documented by a physician or nurse practitioner in his medical record), is afforded the opportunity to participate in the planning of his medical treatment, to refuse to participate in experimental research, and to refuse medication and treatment after fully informed of and understanding the consequences of such action;
- d. is transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay (except as prohibited by sources of third-party payment), and is given a two weeks advance notice in writing to ensure orderly transfer or discharge. A copy of this notice is maintained in his medical record;
- e. is encouraged and assisted, throughout his period of stay, to exercise his rights as a resident and as a citizen, and to this end may voice grievances, has a right of action for damages or other relief for deprivations or infringements of his right to adequate and proper treatment and care established by an applicable statute, rule, regulation or contract, and to recommend changes in policies and services to facility staff and/or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

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- f. may manage his personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law;
- g. is free from mental and physical abuse;
- h. is free from restraint except by order of a physician or nurse practitioner, or unless it is determined that the resident is a threat to himself or to others. Physical and chemical restraints shall be used for medical conditions that warrant the use of a restraint. Restraint is not to be used for discipline or staff convenience. The facility must have policies and procedures addressing the use and monitoring of restraint. A physician order for restraint must be countersigned within 24 hours of the emergency application of the restraint;
- i. is assured security in storing personal possessions and confidential treatment of his personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in the case of his transfer to another health care institution, or as required by law or third-party payment contract;
- j. is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
- k. is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
- l. may associate and communicate privately with persons of his choice, may join with other residents or individuals within or outside of the facility to work for improvements in resident care, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);
- m. may meet with, and participate in activities of, social, religious and community groups at his discretion, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);
- n. may retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);
- o. if married, is assured privacy for visits by his/her spouse; if both are inpatients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician or nurse practitioner in the medical record); and
- p. is assured of exercising his civil and religious liberties including the right to independent personal decisions and knowledge of available choice. The facility shall encourage and assist in the fullest exercise of these rights.

All rights and responsibilities specified in paragraph (1) through (14) of subdivision (a) of this Section, as they pertain to (1) a resident adjudicated incompetent in accordance with State law, (2) a resident who is found by his physician or nurse practitioner to be medically incapable of understanding these rights, or (3) a resident who exhibits a communication barrier, devolve to and shall be exercised by the resident's guardian, next of kin, sponsoring agencies, or representative payee (except when the facility is representative payee).

**Missouri**

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13 CSR 15-18.010 Resident Rights

**PURPOSE:** This rule establishes requirements for protection of resident rights in all types of licensed long-term care facilities.

**Editor's Note:** All rules relating to long-term care facilities licensed by the Division of Aging are followed by a Roman Numeral notation which refers to the class (either Class I, II or III) of standard as designated in section 198.085.1, RSMo.

(1) The facility shall retain and make available for public inspection at the facility to facility personnel, residents, their families or legal representatives and the general public, a list of names, addresses and occupations of all individuals who have a property interest in the facility as well as a complete copy of each official notification from the Division of Aging of violations, deficiencies, licensure approval, disapprovals, or a combination of these, and responses. This includes, as a minimum, statements of deficiencies, copies of plan(s) of correction, acceptance or rejection notice regarding the plan(s) of corrections and revisit inspection report. II/III

(2) Any notice of noncompliance shall be posted in a conspicuous location along with a copy of the most recent inspection reports, as required by section 198.026(6), RSMo. II/III

(3) A copy of the most current Division of Aging rules governing the facility shall be kept available and easily accessible in the facility for review by residents, their families, legal guardians and the public. II/III

(4) Each resident admitted to the facility, or his/her guardian or legally qualified representative, shall be fully informed of his/her rights and responsibilities as a resident. These rights shall be reviewed annually with each resident, guardian or legally qualified representative, either in a group session or individually.

(5) All incoming and present residents in a facility shall be provided statements of resident rights along with rules governing conduct and responsibilities in a manner which effectively communicates, in terms the resident can reasonably be expected to understand, those rights and responsibilities. II/III

(6) The facility shall document the disclosure of resident's rights information to the resident or his/her legal guardian. III

(7) Information regarding resident rights and facility rules shall be posted in a conspicuous location in the facility and copies shall be provided to anyone requesting this information. Informational documents which contain, but are not limited to, updated information on selecting an Alzheimer's special care unit or program shall be given by a facility offering to provide or providing these services to any person seeking information about or placement in an Alzheimer's special care unit or program. III

(8) Prior to or at the time of admission and during his/her stay in the facility, each resident shall be fully informed, in writing, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per-diem rate or federal or state programs. Information shall include procedures to be followed by the facility in cases of medical emergency, including transfer agreements and costs. All residents who receive treatment in an Alzheimer's special care program or unit and their next of kin, designee, legally qualified representative or guardian shall be given

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a copy of the Alzheimer's Special Care Services Disclosure Form at the time of admission. Residents also shall be informed of services outside the facility which may reasonably be made available to the resident and of any reasonable estimate of any foreseeable costs connected with those services. II/III

(9) Prior to or upon admission and at least annually after that, each resident or guardian shall be informed of facility policies regarding provision of emergency and life-sustaining care, of an individual's right to make treatment decisions for him/herself and of state laws related to advance directives for health-care decision making. The annual discussion may be handled either on a group or on an individual basis. Family members or other concerned individuals also shall be informed, upon request, regarding state laws related to advance directives for health-care decision making as well as the facility's policies regarding the provision of emergency or life-sustaining medical care or treatment. If a resident has a written advance health-care directive, a copy shall be placed in the resident's medical record and reviewed annually with the resident unless, in the interval, he/she has been determined incapacitated, in accordance with section 475.075 or 404.825, RSMo. Residents' guardians or health care attorneys-in-fact shall be contacted annually to assure their accessibility and understanding of the facility policies regarding emergency and life-sustaining care. II/III

(10) A physician shall fully inform each resident of his/her health and medical condition unless medically contraindicated. If the physician determines the resident's medical condition contraindicates his/her being fully informed of his/her diagnosis, treatment or any known prognosis, the medical record shall contain documentation and justification of this signed by the physician. If there is a legally authorized representative to make health-care decisions, that person shall be fully informed of the resident's medical condition and shall have free access to the resident's medical records for that purpose, subject to the limitations provided by the power of attorney or any federal law. I/II

(11) Each resident shall be afforded the opportunity to participate in the planning of his/her total care and medical treatment, to refuse treatment and to participate in experimental research only upon his/her informed written consent. If a resident refuses treatment, this refusal shall be documented in the resident's record and the resident, legal guardian, or both, shall be informed of possible consequences of not receiving treatment. II

(12) Each resident shall have the privilege of selecting his/her own physician who will be responsible for the resident's total care. II

(13) No resident shall be transferred or discharged except in the case of an emergency discharge unless the resident, the next of kin, the legal representative, the attending physician and the responsible agency, if any, are notified at least thirty (30) days in advance of the transfer or discharge, and casework services or other means are utilized to assure that adequate arrangements exist for meeting the resident's needs. II

(14) A resident may be transferred or discharged only for medical reasons or for his/her welfare or that of other residents or for nonpayment for his/her stay. II

(15) No resident may be discharged without full and adequate notice of his/her right to a hearing before the Department of Social Services and an opportunity to be heard on the issue of whether his/her discharge is necessary. Such notice shall be given in writing no less than thirty (30) days in advance of the discharge except in the case of an emergency discharge and must comply with the requirements set forth in 13 CSR 15-10.050. II/III

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(16) In emergency discharge situations a written notice of discharge and right to a hearing shall be given as soon as practicable. II/III

(17) A room transfer of a resident within a facility, except in an emergency situation, requires consultation with the resident as far ahead of time as possible and shall not be permitted where this transfer would result in any avoidable detriment to the resident's physical, mental or emotional condition.

(18) Each resident shall be encouraged and assisted, throughout his/her period of stay, to exercise his/her rights as a resident and as a citizen and to this end a resident may voice grievances and recommend changes in policies and services to facility personnel or to outside representatives of his/her choice. A staff person shall be designated to receive grievances and the residents shall be free to voice their complaints and recommendations to the staff designee, an ombudsman or to any person outside the institution. Residents shall be informed of and provided a viable format for recommending changes in policy and services. The facility shall assist residents in exercising their rights to vote. II/III

(19) The exercise of resident rights shall be free from restraint, interference, coercion, discrimination or reprisal. II/III

(20) Each resident shall be free from mental and physical abuse. I

(21) The resident has the right to be free from any physical or chemical restraint except as follows:

(A) When used to treat a specified medical symptom as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psychosocial well-being. The use of restraints must be authorized in writing by a physician for a specified period of time; or

(B) When necessary in an emergency to protect the resident from injury to him/her-self or to others, in which case restraints may be authorized by professional personnel so designated by the facility. The action taken shall be reported immediately to the resident's physician and an order obtained which shall include the reason for the restraint, when the restraint may be removed, the type of restraint and any other actions required. When restraints are indicated, only devices that are the least restrictive for the resident and consistent with the resident's total treatment program shall be used. I/II

(22) In a residential care facility I or II, if it is ever necessary to use a restraint in case of emergency, the resident shall be reevaluated immediately for appropriateness of placement and transferred if necessary. II/III

(23) All information contained in a resident's medical, personal or financial record and information concerning source of payment shall be held confidential. Facility personnel shall not discuss aspects of the resident's record or care in front of persons not involved in the resident's care or in front of other residents. Written consent of the resident or legal guardian shall be required for the release of information to persons not otherwise authorized by law to receive it. II/III

(24) Each resident shall be treated with consideration, respect and full recognition of his/her dignity and individuality, including privacy in treatment and care of his/her personal needs. All persons, other than the attending physician, the facility personnel necessary for any treatment or personal care, or the Division of Aging or Department of Mental Health staff, as appropriate, shall be excluded from observing the resident during any time of examination, treatment or care unless consent has been given by the resident. II/III

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(25) No resident shall be required to perform services for the facility. If the resident desires and it is not contraindicated by his/her physician, the resident may perform tasks or services for him/herself or others. II/III

(26) Each resident shall be permitted to communicate, associate and meet privately with persons of his/her choice whether on the resident's initiative or the other person's initiative, unless to do so would infringe upon the rights of other residents. The person(s) may visit, talk with and make personal, social or legal services available, inform residents of their rights and entitlements by means of distributing educational materials or discussions, assisting residents in asserting their legal rights regarding claims for public assistance, medical assistance and Social Security benefits and engaging in any other methods of assisting, advising and representing residents so as to extend to them the full enjoyment of their rights. The facility, however, may place reasonable limitations on solicitations. II/III

(27) The facility shall permit a resident to meet alone with persons of his/her choice and provide an area which assures privacy. II/III

(28) Telephones appropriate to the residents' needs shall be accessible at all times. Telephones available for residents' use shall enable all residents to make and receive calls privately. II/III

(29) If the resident cannot open mail, written consent by the resident or legal guardian shall be obtained to have all mail opened and read to the resident. II/III

(30) Each resident shall be permitted to participate, as well as not participate, in activities of social, religious or community groups at his/her discretion, both within the facility, as well as outside the facility, unless contraindicated for reasons documented by physician in the resident's medical record. II/III

(31) Each resident shall be permitted to retain and use personal clothing and possessions as space permits. Personal possessions may include furniture and decorations in accordance with the facility's policies and shall not create a fire hazard. The facility shall maintain a record of any personal items accompanying the resident upon admission to the facility, or which are brought to the resident during his/her stay in the facility, which are to be returned to the resident or responsible party upon discharge, transfer or death. II/III

(32) Each married resident shall be assured privacy for visits by his/her spouse. II/III

(33) If both husband and wife are residents, they shall be allowed the choice of sharing or not sharing a room. III

(34) Each resident shall be allowed the option of purchasing or renting goods or services not included in the per-diem or monthly rate from a supplier of his/her own choice, provided the quality of goods or services meets the reasonable standards of the facility. Freedom of choice of pharmacy shall be permitted provided the facility's policy and procedures for packaging specifications are met. II/III

(35) Residents shall not have their personal lives regulated or controlled beyond reasonable adherence to meal schedules and other written policies which may be necessary for the orderly management of the facility and the personal safety of the residents. II

AUTHORITY: sections 198.009, RSMo Supp. 1997 and 198.088, RSMo 1994.\* Original rule filed July 13, 1983, effective Oct. 13, 1983. Amended: Filed Sept. 12, 1984, effective Dec. 13, 1984. Amended: Filed Jan. 3, 1992, effective Aug. 6, 1992. Amended: Feb. 13, 1998, effective Sept. 30, 1998.



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\*Original authority 198.009, RSMo 1979, amended 1993 and 198.088. RSMo 1979, amended 1988, 1989.

13 CSR 15-18.020 Resident's Funds and Property

PURPOSE: This rule establishes standards for protecting resident's personal funds and property in all types of licensed long-term care facilities.

Editor's Note: All rules relating to long-term care facilities licensed by the Division of Aging are followed by a Roman Numeral notation which refers to the class (either Class I, II or III) of standard as designated in section 198.085.1, RSMo.

(1) No operator shall be required to hold any personal funds or money in trust unless some other governmental agency placing residents in the facility makes this a requirement. The recordkeeping and other requirements of this section apply only to those personal possessions and funds which the facility accepts to hold in trust for the resident as provided in the facility's policy and does not apply to other possessions residents have in their rooms or bring into the facility.

(2) The administrator, other designated person, or both, shall use the personal funds of the resident exclusively for the use of the resident and, only when authorized in writing by the resident, his/her designee or legal guardian. A designee shall not be the administrator or an employee of the facility. II/III

(3) When a resident is admitted, s/he and-his/her designee or guardian shall be provided with a statement explaining the facility's policies and resident's rights regarding personal funds. If the facility handles resident's funds, this statement shall include an explanation of the procedure for deposit or withdrawals of funds from any source to the resident or to the resident's account. The facility shall allow the residents access to their personal possessions and funds during regular business hours, Monday through Friday. III

(4) The separate account(s) required to be maintained by section 198.090.1(3), RSMo shall be maintained in a bank or savings and loan association and interest accrued shall be credited to each resident's account at least annually. With written authorization from the resident, the operator may purchase a burial policy for the purpose of burying the resident. III

(5) A petty cash fund of up to fifty dollars (\$50) for each resident for whom the facility is holding funds may be kept in the facility and shall be maintained separately from the facility's funds. II/III

(6) A written account for each resident, showing receipts to and disbursements from the personal funds of each resident, shall be maintained. These may be kept in one (1) ledger or record or they may be kept individually. If the facility policy provides, and if appropriate or required by another governmental agency, two (2) personal funds accounts may be kept for residents-one (1) for clothing allowance and one (1) for spending money. III

(7) Receipt of a resident's funds or personal possessions held in trust shall be acknowledged by a written receipt or cancelled checks. III

(8) Receipts for any purchases made by the operator and paid for from the resident's personal funds shall be kept and be available to the resident, his/her designee or legal guardian. III

(9) All written accounts of the resident's funds shall be brought current monthly and a written statement showing the current balance and all transactions shall be given to the resident, his/her designee or legal guardian on a quarterly basis. II/III

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(10) The operator shall have a receipt for the funds and possessions returned to the resident, designee or guardian. Within five (5) days of the discharge of a resident, the resident or his/her designee or guardian shall be given an up-to-date accounting of the resident's personal funds and the balance of the funds and all personal possessions shall be returned to the resident. II/III

(11) Upon the death of a resident, the operator of the facility shall submit in writing on form MO 886-3103, a complete account of all the resident's remaining personal funds and the name and address of the resident's guardian, conservator, fiduciary of the resident's estate or the individual who was designated to receive the quarterly accounting of all financial transactions made. Personal funds for the purpose of this regulation shall include all the resident's remaining funds with the facility, in any account, with whatever title the account(s) may be known. The complete account of funds shall be submitted within sixty (60) days from the date of the resident's death to the Department of Social Services, Division of Medical Services, TPL Unit, PNA Recovery, P.O. Box 6500, Jefferson City, MO 65102-6500. II/II

(A) None of the resident's personal funds shall be paid to a fiduciary, guardian, conservation or other person until the operator has fully complied with section 198.090.1, RSMo except that funeral expenses may be paid from a resident's personal funds held by a facility if no other funds are available to cover the cost. If funds are used for this purpose, this fact and the amount used shall be noted on the account report submitted to the department and documentation of payment shall be attached.

(B) Upon receipt of the accounting of the resident's remaining personal funds on form MO 886-3103, the Department of Social Services will determine the amount of aid, care, assistance or services paid by the department. The Department of Social Services will notify the operator of the amount determined to have been paid by the department on behalf of the deceased recipient within sixty (60) days of receipt of the facility operator's accounting or within fifteen (15) working days if a special request is made by the operator for expatiated handling giving the reason(s) for the request, that is, need to comply with contractual or regulatory obligation of another government agency. The amount specified in the notification shall be considered as a claim upon the funds held by the operator. The operator shall pay to the Department of Social Services any remaining personal funds, in the resident's personal fund account, up to the amount determined by the department. Payment shall be made by check payable to the Department of Social Services within sixty (60) working days of the receipt of the demand for payment. Payment shall be made as instructed on the department's claim.

(C) The Department of Social Services will notify in writing the resident's guardian, conservator, fiduciary of the resident's estate or the individual who was designated to receive the quarterly accounting of all financial transactions of the amount determined to have been paid by the department on behalf of the deceased resident.

(D) If there are any remaining personal funds after payment has been issued to the Department of Social Services, then the deceased resident's remaining funds shall be handled in accordance with section 198.090.1(8), RSMo and 13 CSR 15-18.020(12).

(E) Failure of an operator of a facility participating in the Title XIX (Medicaid) program to submit within sixty (60) days of the death of a resident a complete accounting of the remaining personal funds of any resident who has received aid, care, assistance or services from the Department of Social Services shall be a Medicaid program violation

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under 13 CSR 70-3.030, if the operator had knowledge of such funds, during the sixty (60)-day period. If additional funds are received by the operator after the initial report has been filed, the department shall be immediately informed by the operator.

(12) Upon the death of a resident who, to the operator's knowledge and as confirmed by the department, has not received aid or assistance from the Department of Social Services, if personal funds or possessions are not claimed by a fiduciary within one (1) year of the resident's death, the operator is required to comply, within sixty (60) days of the one (1) year anniversary of the death of the resident, with section 198.090.1(8), RSMo.

(A) If, after one (1) year from the date of death, no fiduciary makes claim on funds or possessions, the operator shall notify the Division of Aging, Attention: Institutional Accounting Section, that the funds remain unclaimed. This notice shall be sent by the operator within sixty (60) days and include the resident's name, Social Security number, date of death and the amount of resident funds or possessions being held belonging to the deceased resident.

1. If unclaimed funds in the resident's fund accounts or possessions have a value of less than one hundred fifty dollars (\$150), and the operator has complied with 42 CFR 483.10(c)(6), if required, the funds or proceeds of the sale of the possessions shall be deposited after one (1) year in a fund for the benefit of all residents of the facility for social and educational activities.

2. If unclaimed funds in the resident's fund accounts or possessions have a value of more than one hundred fifty dollars (\$150) and the operator has complied with 42 CFR 483.10(c)(6), if required, for deceased residents funds, the operator shall hold the unclaimed funds for two (2) years from the date of death. These funds shall then be considered abandoned property under sections 447.500—447.585, RSMo and shall be returned to the state of Missouri within sixty (60) days after two (2) years from the date of death. If the operator is a 501(c)(3) corporation, then it shall comply with section 447.540, RSMo. The operator shall contact the Office of the Treasurer, Unclaimed Property Administrator, P.O. Box 1272, Jefferson City, MO 65102-1272 for instructions and forms to return the unclaimed funds and possessions to the state of Missouri. There shall be an accounting subject to inspection and audit by the Division of Aging or its authorized agents for these unclaimed funds and possessions returned to the state of Missouri.

(B) The operator shall keep an accounting of these funds with documentation and receipts and disbursements to these funds which will be subject to inspection and audit by the Division of Aging.

(13) Any owner, operator, manager, employee or affiliate of an owner or operator receiving personal property or anything with a value of ten dollars (\$10) or more from a resident shall make a written statement giving the date of receipt, estimated value and the name of the person making the gift. These statements shall be retained by the operator and made available to the Department of Social Services or Department of Mental Health as appropriate and to the resident, his/her designee or legal guardian. In one (1) calendar year, no owner, operator, manager, employee or affiliate of an owner or operator shall receive from resident's personal property or anything of value over one hundred dollars (\$100). II/III

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(14) The bond required by section 198.096, RSMo for operators holding personal funds of residents shall be in a form approved by the Division of Aging and shall provide that residents who allege that they have been wrongfully deprived of moneys held in trust may bring an action for recovery directly against the surety. The bond shall be in an amount equal to at least one and one-half (1 1/2) times the average monthly balance of the resident's personal funds, including petty cash, or the average total of the monthly balances. The average monthly balance(s) shall be rounded to the nearest one thousand dollars (\$1000). One (1) bond may be used to cover the residents' funds in more than one (1) facility operated by the same operator, if the facility is a multilicensed facility on the same premises. If not on the same premises, then one (1) bond may be used if the bond specifies the amount of coverage provided for each individual facility and the coverage for each facility is a minimum of one thousand dollars (\$1000). II/III The director may require an operator to file a bond in an amount greater than one and one-half (1 1/2) times the average total of the balances if the division determines the increase is necessary; the operator is given sixty (60)-days' notice and opportunity for hearing prior to requiring that increase; and the director determines by the evidence presented at any such hearing that the increase is necessary.

(15) All records and receipts required to be maintained under this rule and under section 198.090, RSMo shall be maintained for at least seven (7) years from the end of the fiscal year during which the records were originally made. II/III

(16) Records related to resident funds shall be maintained in the facility or shall be available for review and copying, in their entirety, within twenty-four (24) hours of a request for access by the Division of Aging or its authorized representative. Records kept for the prior seven (7) years, as required in section (15) and under section 198.090, RSMo shall be transferred to a new operator who assumes responsibility for a facility, and if not transferred in entirety, the Division of Aging shall be notified immediately by the new operator. II/III

(17) If an operator chooses to place a cash deposit in a lending institution in lieu of a bond as referenced in section 198.096.5., RSMo, the amount must be equal to the amount of the bond required and shall be deposited with an insured lending institution pursuant to a noncancellable escrow agreement. The written agreement shall be submitted to the division and shall be approved prior to license issuance. II

AUTHORITY: section 198.090, RSMo Supp. 1993.\* Original rule filed July 13, 1983, effective Oct. 13, 1983. Amended: Filed Sept. 12, 1984, effective Dec. 13, 1984.

Amended: Filed Aug. 1, 1988, effective Nov. 11, 1988. Amended: Filed Jan. 3, 1992, effective Aug. 6, 1992. Amended: Filed July 22, 1994, effective Feb. 26, 1995.

\*Original authority 1979, amended 1982, 1989, 1992, 1993.

CODE OF STATE REGULATIONS (8/31/98) Rebecca McDowell Cook Secretary of State

**Montana**

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37.106.107 SUBMISSION OF APPLICATIONS

(7) Within 20 working days after receipt of an application, if the application is determined to be incomplete, the department shall notify the applicant in writing by mail

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of that fact and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 calendar days, within which the department must receive the additional information requested. Within 15 working days after receipt of the additional information, the department shall determine whether the application is complete.

### 37.40.331 ITEMS BILLABLE TO RESIDENTS

(1) The department will not pay a provider for any of the following items or services provided by a nursing facility to a resident. The provider may charge these items or services to the nursing facility resident:

- (a) gifts purchased by residents;
- (b) social events and entertainment outside the scope of the provider's activities program;
- (c) cosmetics and grooming items and services in excess of those for which payment is made by medicare or medicaid;
- (d) personal comfort items, including tobacco products and accessories, notions, novelties, and confections;
- (e) personal dry cleaning;
- (f) beauty shop services;
- (g) television, radio and private telephone rental;
- (h) less-than-effective drugs (exclusive of stock items);
- (i) vitamins, multivitamins, vitamin supplements and calcium supplements;
- (j) personal reading materials;
- (k) personal clothing;
- (l) flowers and plants;
- (m) privately hired nurses or aides;
- (n) specially prepared or alternative food requested instead of food generally prepared by facility; and
- (o) the difference between the cost of items usually reimbursed under the per diem rate and the cost of specific items or brands requested by the resident which are different from that which the facility routinely stocks or provides (e.g., special lotion, powder, diapers);

(2) Services provided in private rooms will be reimbursed by the department at the same rate as services provided in a double occupancy room.

(a) A provider must provide a medically necessary private room at no additional charge and may not bill the recipient any additional charge for the medically necessary private room.

(b) A provider may bill a resident for the extra cost of a private room if the private room is not medically necessary and is requested by the resident. The provider must clearly inform the resident that additional payment is strictly voluntary.

(History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-6-101 and 53-6-113, MCA; NEW, 1991 MAR p. 2050, Eff. 11/1/91; AMD, 1992 MAR p. 1617, Eff. 7/31/92; AMD, 1993 MAR p. 1385, Eff. 10/1/93; AMD, 1998 MAR p. 1749, Eff. 6/26/98; TRANS, from SRS, 2000 MAR p. 489.)

### 37.106.2904 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS

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(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:

(a) to permit medical treatment to proceed unless the health care facility has been notified that the resident has previously made a valid refusal of the treatment in question; or

(b) if a resident's unanticipated violent or aggressive behavior places the resident or others in imminent danger, in which case the resident does not have the right to refuse the use of restraints. In this situation:

(i) the use of restraints is a measure of last resort to protect the safety of the resident or others and may be used only if the facility determines and documents that less restrictive means have failed;

(ii) the size, gender, physical, medical and psychological condition of the resident must be considered prior to the use of a restraint;

(iii) a licensed nurse shall contact a resident's physician for restraint orders within one hour of application of a restraint;

(iv) the licensed nurse shall document in the resident's clinical record the circumstances requiring the restraints and the duration; and

(v) a restrained resident must be monitored as their condition warrants, and restraints must be removed as soon as the need for emergency care has ceased and the resident's safety and the safety of others can be assured.

(4) In accordance with the Montana Long-Term Care Residents' Bill of Rights, the resident or authorized representative is allowed to exercise decision-making rights in all aspects of the resident's health care or other medical regimens, with the exception of the circumstances described in (3)(b).

50-5-1101. Short title. This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

History: En. Sec. 1, Ch. 582, L. 1987.

50-5-1102. Findings and purpose.

(1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

History: En. Sec. 2, Ch. 582, L. 1987.

50-5-1104. Rights of long-term care facility residents.

(1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or the resident's authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or the resident's authorized representative is entitled, upon request, to receive and examine an explanation of the

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resident's monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on the resident's own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

(i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in another part of the facility where the resident must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

History: En. Sec. 4, Ch. 582, L. 1987; amd. Sec. 43, Ch. 16, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 209, Ch. 42, L. 1997.

50-5-1105. Long-term care facility to adopt and post residents' rights.

(1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including

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as a minimum the rights listed in [50-5-1104](#);

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

History: En. Sec. 5, Ch. 582, L. 1987.

50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in [50-5-1104](#) and [50-5-1105](#) devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by his physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court.

History: En. Sec. 6, Ch. 582, L. 1987.

50-5-1107. Enforcement of residents' rights. The requirements of [50-5-1104](#) through [50-5-1106](#) are included in the minimum standards considered by the department in reviewing applications for license, as provided in [50-5-204](#).

History: En. Sec. 7, Ch. 582, L. 1987.

52-3-603. Office of legal and long-term care ombudsman services. Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of public health and human services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly.

History: En. Sec. 3, Ch. 223, L. 1987; amd. Sec. 65, Ch. 83, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 361, Ch. 546, L. 1995

52-3-604. Access to long-term care facilities.

(1) The long-term care ombudsman or local ombudsman shall have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.

(2) Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman at any time he considers necessary to perform the duties described in [52-3-603](#).



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(3) The ombudsman shall carry out the duties described in [52-3-603](#) in a manner that is least disruptive to resident care and activities.

History: En. Sec. 4, Ch. 223, L. 1987; Sec. , MCA 1989; reded. by Code Commissioner, 1991.

52-3-605. Enforcement of access.

(1) A person who violates the provisions of [52-3-604](#) is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. The department of public health and human services or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of public health and human services or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of [52-3-604](#) in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 5, Ch. 223, L. 1987; Sec. , MCA 1989; reded. by Code Commissioner, 1991; amd. Sec. 153, Ch. 418, L. 1995; amd. Sec. 362, Ch. 546, L. 1995.

50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of [45-7-401](#) and [50-16-551](#), if applicable, unless the disclosure was authorized as permitted by law. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public.

History: En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979; amd. Sec. 13, Ch. 329, L. 1983; amd. Sec. 26, Ch. 632, L. 1987; amd. Sec. 251, Ch. 546, L. 1995; amd. Sec. 4, Ch. 396, L. 2003.

52-3-813. Confidentiality.

(1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to [52-3-811](#) must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

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(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

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- (k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;
- (l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;
- (m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and
- (n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

- (a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;
- (b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;
- (c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate.

History: En. Sec. 6, Ch. 623, L. 1983; amd. Sec. 2, Ch. 662, L. 1985; amd. Sec. 63, Ch. 83, L. 1989; amd. Sec. 7, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 7, Ch. 167, L. 1993; amd. Sec. 4, Ch. 421, L. 1993; amd. Sec. 58, Ch. 18, L. 1995; amd. Sec. 5, Ch. 465, L. 1995; amd. Sec. 366, Ch. 546, L. 1995; amd. Sec. 6, Ch. 196, L. 1999; amd. Sec. 193, Ch. 483, L. 2001.

#### 37.40.110 SERVICES FURNISHED

The following sections list those services commonly furnished by nursing personnel in skilled nursing homes and their usual skill classification. Any generally non-skilled service could, because of special medical complications in an individual case, require skilled performance, supervision or observation. However, the complications and special services involved should be documented by nursing notes and/or physician orders with progress notes. These records should include the observations made of physical findings, new developments in the course of the disease, the carrying out of details of treatment prescribed, and the results of the treatment.

(1) Medications given by intravenous or intramuscular injections usually require skilled services. The frequency of injections would be particularly significant in determining whether the patient needs continuous skilled nursing care.

Injections which can usually be self-administered – for example, the well-regulated diabetic who receives a daily insulin injection -- do not require skilled services. Oral

medications which require immediate changes in dosages because of sudden undesirable side effects or reactions should be administered to the patient and observed by licensed nurses, e.g., anti-coagulants, quinidine. This is a skilled service. Where a prolonged regimen of oral drug therapy is instituted, the need for continued presence of skilled nursing personnel can be presumed only during the period in which the routine is being established and changes in dosage cannot be anticipated or accomplished by unskilled personnel, e.g., digitalis.

(a) Administration of eye drops and topical ointments (including those required following cataract surgery) is not a skilled service. In Montana, institutional patients must receive all medications from licensed nurses; this fact, however, would not make the administration of oral medication a skilled service where the same type of medications are frequently prescribed for home use without skilled personnel being present.

37.106.606 MINIMUM STANDARDS FOR A SKILLED AND SKILLED/  
INTERMEDIATE CARE FACILITY: DRUG SERVICES

(2) Self-administration of medication by a patient is not permitted except on order of his licensed physician.

**Nebraska**

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12-006.05 Resident Rights:

The facility must inform residents of their rights in writing. The operations of the facility must afford residents the opportunity to exercise their rights, which must include, but are not limited to, the following. Residents must have the right to:

1. Be fully informed in writing prior to or at the time of admission and during his or her stay, of services available in the facility, and of related charges including any charges for services not covered by the facility's basic per diem rate;
2. Be fully informed of his or her rights and responsibilities as a resident and of all rules and regulations governing resident conduct and responsibilities. This information must be provided prior to or at the time of admission and its receipt acknowledged by the resident in writing, or, in the case of residents already in the facility, upon the facility's adoption or amendment of resident rights policies;
3. Be fully informed by a physician of his or her health and medical condition unless medically contraindicated;
4. Participate in the planning of his or her total care and medical treatment, or to refuse treatment. A resident may participate in experimental research only upon informed written consent;
5. Be free from arbitrary transfer or discharge. The resident must be informed at the time of admission that he or she may be transferred or discharged only upon the following terms:
  - a. Upon his or her consent;
  - b. For medical reasons, which must be based on the resident's needs and be determined and documented by a physician;
  - c. For the resident's safety or the safety of other residents or facility employees;
  - d. When rehabilitation is such that movement to a less restrictive setting is possible; or

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e. For nonpayment of the resident's stay, except as prohibited by Title XVIII or XIX of the Social Security Act as amended, or the Nebraska Nursing Home Act, Neb. Rev. Stat. §§ 71-6008 to 71-6037. Nonpayment under the Nebraska Nursing Home Act must not include a change in resident economic status so that the resident receives Medicaid or becomes eligible for Medicaid if the resident has resided in the facility for a period of at least one year after July 17, 1986, unless 10% of the facility's residents are receiving Medicaid or are eligible for Medicaid. This provision does not apply to Nebraska Veterans' Homes established under Chapter 80, Article 3 of Nebraska Statutes.

A minimum of 30 days written notice must be given to the resident or to his or her designee prior to involuntary transfer or discharge of a resident, except that:

- (1) Five days written notice must be given if the transfer is to a less restrictive setting due to rehabilitation.
- (2) Ten days written notice will be given if the resident is five or more days in arrears of payment for stay.
- (3) Written notice is not required in the event of emergency transfer or discharge if the transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician, or if mandated for safety of other residents or facility employees as is documented in the facility's records.

Written notice must contain:

- (1) The stated reason for transfer or discharge;
- (2) The effective date of the transfer or discharge; and
- (3) In not less than 12-point type, the following text:

A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at the facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of the facility or service, the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

6. Exercise rights as a resident of the facility and as a citizen of the United States;
7. Voice complaints and grievances without discrimination or reprisal and have those grievances addressed;
8. Be free from chemical and physical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms;
9. Be free from abuse, neglect and misappropriation of their money and personal property;
10. Refuse to perform services for the facility;
11. Examine the results of the most recent survey of the facility conducted by the Department;
12. Privacy in written communication including sending and receiving mail;
13. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility. The administrator may refuse access to any person for any of the following reasons:
  - a. The resident refuses to see the visitor;

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- b. The presence of that person would be injurious to the health and safety of a resident, especially as documented by the attending physician;
- c. The visitor's behavior is unreasonably disruptive to the facility and this behavior is documented by the facility;
- d. The presence of that person would threaten the security of a resident's property or facility property; or
- e. The visit is for commercial purposes only.

Any person refused access to a facility may, within 30 days of such refusal, request a hearing by the Department. The wrongful refusal of a nursing home to grant access to any person as required in Neb. Rev. Stat. §§ 71-6019 and 71-6020 constitutes a violation of the Nebraska Nursing Home Act. A nursing home may appeal any citation issued pursuant to this section as provided in 175 NAC 12-008.02;

- 14. Have access to the use of a telephone with auxiliary aides where calls can be made in private;
- 15. Retain and use personal possessions, including furnishings, and clothing as space permits, unless to do so would infringe upon the rights and safety of other residents;
- 16. Self-administer medications if it is safe to do so;
- 17. Form and participate in an organized resident group that functions to address facility issues;
- 18. Review and receive a copy of their permanent record, within two working days;
- 19. Manage his or her personal financial affairs. Under specific written authorization by the resident, the facility may assist in such management to the extent specified by the resident;
- 20. Receive confidential treatment of all information contained in his or her records, including information contained in an electronic data bank. His or her written consent or that of the resident's designee is required for the release of information to persons not otherwise authorized under law to receive it; and
- 21. Be treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care for his or her personal needs.

**Nevada**

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NAC 449.5405 Rights of patients. ([NRS 449.037](#))

- 1. In addition to the requirements set forth in [NRS 449.700](#) to [449.730](#), inclusive, each facility shall adopt and comply with a policy which ensures that each patient of the facility is:
  - (a) Treated with respect, dignity and complete recognition of the individuality and personal requirements of the patient;
  - (b) Provided with sufficient privacy during treatment to ensure that any unwarranted exposure of the patient does not occur and to ensure confidentiality of the clinical record of that patient;
  - (c) Provided with a safe and comfortable environment for receiving any treatment provided by the facility;
  - (d) Provided with information concerning his treatment in a manner which ensures that the patient or the legal representative of the patient understands that information;

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- (e) Informed by a physician of the medical status of the patient;
- (f) Informed about all modalities and settings for the treatment of end-stage renal disease;
- (g) Informed about and participates in, if requested by the patient, each aspect of care, including, without limitation, the right to refuse treatment and the medical consequences of refusing that treatment;
- (h) Aware of any services that are available to the patient at the facility and the charges for those services; and
- (i) Informed about any reuse of dialysis supplies by the facility, including hemodialyzers. If any brochures or other printed materials are used to describe the facility or any services provided by the facility, the facility shall ensure that the brochures or other printed materials include a statement specifying the policy of the facility concerning the reuse of those supplies.

2. Each facility shall ensure that each patient of the facility:

- (a) Receives a reasonable response by the facility to any request or requirement of the patient for treatment or service in accordance with any applicable law or regulation and within the capacity of the facility to provide the requested treatment or service;
- (b) Is transferred only for:
  - (1) A medical reason;
  - (2) The welfare of the patient or any other patient or member of the staff of the facility; or
  - (3) The nonpayment of fees owed by the patient to the facility;
- (c) Is provided with information concerning advance directives and the provisions of [NRS 450B.400](#) to [450B.590](#), inclusive, concerning do-not-resuscitate identification and do-not-resuscitate orders; and
- (d) Is fully informed of:
  - (1) The rights specified in this subsection; and
  - (2) All rules established by the facility concerning the conduct and responsibilities of the patient during the period he is a patient of the facility.

3. Upon admission of a patient to a facility, the facility shall provide to the patient or his legal representative a written copy of the patient's rights and responsibilities. A copy of those rights and responsibilities must be posted:

- (a) In the waiting room or other area of the facility to which the members of the general public have access; and
- (b) In close proximity to the license of the facility.

4. A facility shall not transfer or discharge a patient of the facility for the nonpayment of fees by the patient unless the facility notifies the patient in writing of the intent of the facility to transfer or discharge the patient. The written notice must include a statement indicating the amount of the fees owed by the patient to the facility.

5. Upon admitting a patient to a facility, the facility shall provide to the patient a written statement that informs the patient of the manner in which he may file a complaint against the facility. The statement must include, without limitation:

- (a) A statement indicating that the patient may direct such a complaint to the Bureau or file the complaint with the Health Division; and
- (b) The telephone number of the local office of the Health Division.

6. Except as otherwise provided in subsection 7, if a facility has admitted more than eight patients who read the same language other than English, all written information

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provided by the facility to any of those patients pursuant to the provisions of this section must be written in that other language.

7. In lieu of providing written information in a language other than English pursuant to the provisions of subsection 6, a facility may use the services of an interpreter to provide that information to a patient specified in that subsection if, as determined by the Bureau, the facility maintains written documentation which indicates that the information conveyed by the interpreter to the patient was sufficient to ensure the ability of the patient to participate in the decisions made concerning his treatment at the facility.

(Added to NAC by Bd. of Health by R130-99, eff. 8-1-2001)

Rights of Patients NAC 449.74445 Generally. ([NRS 449.037](#))

1. A facility for skilled nursing shall protect and promote the rights of each patient in the facility.

2. In addition to the rights set forth in [NRS 449.710](#) and [449.720](#), a patient in a skilled nursing facility has the right to:

(a) Receive care in a manner and environment that maintains and enhances each patient's dignity with respect to each patient's individuality.

(b) Exercise his rights without the threat of interference, coercion, discrimination or reprisal.

(c) Choose his attending physician.

(d) Be fully informed, in a language that the patient understands, of his total health status, including, without limitation, his medical condition.

(e) Participate in decisions relating to his health care, unless he is unable to do so because he is incompetent or incapacitated.

(f) Receive services with reasonable accommodation for his individual needs and preferences, unless the health or safety of the patient or other patients would be endangered.

(g) Privacy in relation to his accommodations, personal care, written and oral communications and meetings with other persons. The provisions of this paragraph do not require a facility for skilled nursing to provide a private room to each patient.

(h) File grievances with the facility without the threat of discrimination or reprisal and to the prompt resolution of those grievances. Such grievances include, without limitation, complaints relating to treatment that has been furnished or not furnished and the behavior of other patients.

(i) Use a telephone where calls can be made without being overheard.

(j) Retain and use personal possessions as space allows, including, without limitation, furniture and clothing, unless to do so would infringe upon the rights or threaten the health and safety of other patients.

(k) Share a room with his or her spouse if both spouses reside in the facility and consent to the arrangement.

(l) Manage his financial affairs.

(Added to NAC by Bd. of Health by R051-99, eff. 9-27-99)

NAC 449.74447 Communications with other persons; examination of records by advocate. ([NRS 449.037](#))

1. A facility for skilled nursing shall not prohibit a patient in the facility from contacting, receiving information from or speaking to:

(a) A representative of the Bureau.



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- (b) The patient's physician.
  - (c) Any person who advocates for the rights of the patients of the facility, including, without limitation:
    - (1) Advocates for residents of facilities for long-term care appointed pursuant to [chapter 427A](#) of NRS; and
    - (2) Persons who advocate for and are responsible for the protection of persons with developmental disabilities or who are mentally ill.
  - (d) Any person who provides health care, social, legal or other services to the patient.
  - (e) The relatives of the patient.
  - (f) Any other persons with whom the patient wishes to visit.
2. The provisions of this section do not prohibit a facility for skilled nursing from adopting reasonable restrictions relating to the visitation of patients.
3. A facility for skilled nursing shall not prohibit an advocate for residents of facilities for long-term care appointed pursuant to [chapter 427A](#) of NRS from examining the medical records of a patient of the facility in accordance with state law and with the permission of the patient or the patient's legal representative.

**New Hampshire**

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He-E802.10 Residents' Rights

- a) Upon the resident's admission to the certified facility, the facility shall inform the resident or his/her legal representative both orally and in writing, and in a language that the resident understands, of his or her rights, and of all rules and regulations governing resident conduct and responsibilities during the stay in the facility.
- b) The facility shall provide the resident with written material that describes residents' rights including the rights of residents in the event of a proposed transfer or discharge from the facility as described in these rules and RSA 151:26. The notice shall be made prior to or upon admission and at least annually during the resident's stay, and receipt of such information. And any amendments to it shall be acknowledged in writing by the resident.

Source. #7751, eff 8-17-02

**New Jersey**

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SUBCHAPTER 4. MANDATORY RESIDENT RIGHTS

8:39-4.1 Resident rights

- (a) Each resident shall be entitled to the following rights:
  - 1. To retain the services of a physician or advanced practice nurse the resident chooses, at the resident's own expense or through a health care plan;
  - 2. To have a physician or advanced practice nurse explain to the resident, in language that the resident understands, his or her complete medical condition, the recommended treatment, and the expected results of the treatment, except when the physician deems it medically inadvisable to give such information to the resident and records the reason for

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such decision in the resident's medical record; and provides an explanation to his or her next of kin or guardian;

3. To participate, to the fullest extent that the resident is able, in planning his or her own medical treatment and care;

4. To refuse medication and treatment after the resident has been informed, in language that the resident understands, of the possible consequences of this decision. The resident may also refuse to participate in experimental research, including the investigations of new drugs and medical devices. The resident shall be included in experimental research only when he or she gives informed, written consent to such participation;

5. To be free from physical and mental abuse and/or neglect;

6. To be free from chemical and physical restraints, unless they are authorized by a physician or advanced practice nurse for a limited period of time to protect the resident or others from injury. Under no circumstances shall the resident be confined in a locked room or restrained for punishment, for the convenience of the nursing home staff, or with the use of excessive drug dosages;

7. To manage his or her own finances or to have that responsibility delegated to a family member, an assigned guardian, the nursing home administrator, or some other individual with power of attorney. The resident's authorization must be in writing, and must be witnessed in writing;

8. To receive a written statement or admission agreement describing the services provided by the nursing home and the related charges. Such statement or admission agreement must be in compliance with all applicable State and Federal laws. This statement or agreement must also include the nursing home's policies for payment of fees, deposits, and refunds. The resident shall receive this statement or agreement prior to or at the time of admission, and afterward whenever there are any changes;

9. To receive a quarterly written account of all resident's funds and itemized property that are deposited with the facility for the resident's use and safekeeping and of all financial transactions with the resident, next of kin, or guardian. This record shall also show the amount of property in the account at the beginning and end of the accounting period, as well as a list of all deposits and withdrawals, substantiated by receipts given to the resident or his or her guardian;

10. To have daily access during specified hours to the money and property that the resident has deposited with the nursing home. The resident also may delegate, in writing, this right of access to his or her representative;

11. To live in safe, decent, and clean conditions in a nursing home that does not admit more residents than it can safely accommodate while providing adequate nursing care;

12. To be treated with courtesy, consideration, and respect for the resident's dignity and individuality;

13. To receive notice of an intended transfer from one room to another within the facility or a change in roommate, including a right to an informal hearing with the administrator prior to the transfer as well as a written statement of the reasons for such transfer. The nursing home shall not move the resident to a different bed or room in the facility if the relocation is arbitrary and capricious. A transfer would not be considered arbitrary and capricious if a facility can document a clinical necessity for relocating the resident, such as a need for isolation or to address behavior management problems, or there is a

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hardship to an applicant for admission through a delay caused by inefficient distribution of beds by gender;

14. To wear his or her own clothes, unless this would be unsafe or impractical. All clothes provided by the nursing home shall fit in a way that is not demeaning to the resident;

15. To keep and use his or her personal property, unless this would be unsafe, impractical, or an infringement on the rights of other residents. The nursing home shall take precautions to ensure that the resident's personal possessions are secure from theft, loss, and misplacement;

16. To have physical privacy. The resident shall be allowed, for example, to maintain the privacy of his or her body during medical treatment and personal hygiene activities, such as bathing and using the toilet, unless the resident needs assistance for his or her own safety;

17. To have reasonable opportunities for private and intimate physical and social interaction with other people, including arrangements for privacy when the resident's spouse visits. If the resident and his or her spouse are both residents of the same nursing home, they shall be given the opportunity to share a room, unless this is medically inadvisable, as documented in their records by a physician or advanced practice nurse;

18. To confidential treatment of information about the resident. Information in the resident's records shall not be released to anyone outside the nursing home without the resident's approval, unless the resident transfers to another health care facility, or unless the release of the information is required by law, a third-party payment contract, or the New Jersey State Department of Health and Senior Services;

19. To receive and send mail in unopened envelopes, unless the resident requests otherwise. The resident also has a right to request and receive assistance in reading and writing correspondence unless it is medically contraindicated, and documented in the record by a physician or advanced practice nurse;

20. To have unaccompanied access to a telephone at a reasonable hour to conduct private conversations, and, if technically feasible, to have a private telephone in his or her living quarters at the resident's own expense;

21. To stay out of bed as long as the resident desires and to be awakened for routine daily care no more than two hours before breakfast is served, unless a physician recommends otherwise and specifies the reasons in the resident's medical record;

22. To receive assistance in awakening, getting dressed, and participating in the facility's activities, unless a physician or advanced practice nurse specifies reasons in the resident's medical record;

23. To meet with any visitors of the resident's choice between 8:00 A.M. and 8:00 P.M. daily. If the resident is critically ill, he or she may receive visits at any time from next of kin or a guardian, unless a physician or advanced practice nurse documents that this would be harmful to the resident's health;

24. To take part in nursing home activities, and to meet with and participate in the activities of any social, religious, and community groups, as long as these activities do not disrupt the lives of other residents;

25. To leave the nursing home during the day with the approval of a physician or advanced practice nurse and with the resident's whereabouts noted on a sign-out record.

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Arrangements may also be made with the nursing home for an absence overnight or longer;

26. To refuse to perform services for the nursing home;

27. To request visits at any time by representatives of the religion of the resident's choice and, upon the resident's request, to attend outside religious services at his or her own expense. No religious beliefs or practices shall be imposed on any resident;

28. To participate in meals, recreation, and social activities without being subjected to discrimination based on age, race, religion, sex, nationality, or disability. The resident's participation may be restricted or prohibited only upon the written recommendation of his or her physician or advanced practice nurse;

29. To organize and participate in a Resident Council that presents residents' concerns to the administrator of the facility. A resident's family has the right to meet in the facility with the families of other residents in the facility;

30. To discharge himself or herself from the nursing home by presenting a release signed by the resident. If the resident is an adjudicated mental incompetent, the release must be signed by his or her next of kin or guardian;

31. To be transferred or discharged only for one or more of the following reasons, with the reason for the transfer or discharge recorded in the resident's medical record:

i. In an emergency, with notification of the resident's physician or advanced practice nurse and next of kin or guardian;

ii. For medical reasons or to protect the resident's welfare or the welfare of others;

iii. To comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act, as specified in N.J.A.C. 8:39-9.6(d); or

iv. For nonpayment of fees, in situations not prohibited by law.

32. To receive written notice at least 30 days in advance when the nursing home requests the resident's transfer or discharge, except in an emergency. Written notice shall include the name, address, and telephone number of the New Jersey Office of the Ombudsman for the Institutionalized Elderly, and shall also be provided to the resident's next of kin or guardian 30 days in advance;

33. To be given a written statement of all resident rights as well as any additional regulations established by the nursing home involving resident rights and responsibilities. The nursing home shall require each resident or his or her guardian to sign a copy of this document. In addition, a copy shall be posted in a conspicuous, public place in the nursing home. Copies shall also be given to the resident's next of kin and distributed to staff members. The nursing home is responsible for developing and implementing policies to protect resident rights;

34. To retain and exercise all the constitutional, civil, and legal rights to which the resident is entitled by law. The nursing home shall encourage and help each resident to exercise these rights; and

35. To voice complaints without being threatened or punished. Each resident is entitled to complain and present his or her grievances to the nursing home administrator and staff, to government agencies, and to anyone else without fear of interference, discharge, or reprisal. The nursing home shall provide each resident and his or her next of kin or guardian with the names, addresses, and telephone numbers of the government agencies to which a resident can complain and ask questions, including the Department and the

Office of the Ombudsman for the Institutionalized Elderly. These names, addresses, and telephone numbers shall also be posted in a conspicuous place near every public telephone and on all public bulletin boards in the nursing home.

(b) Each resident, resident's next of kin, and resident's guardian shall be informed of the resident rights enumerated in this subchapter, and each shall be explained to him or her. None of these rights shall be abridged or violated by the facility or any of its staff.

### **New Mexico**

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#### **7.9.2.22 RIGHTS OF RESIDENTS:**

Every resident shall have the right to:

##### **A. COMMUNICATIONS:**

Have private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

- (1) Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.
- (2) Use a telephone for private communications during reasonable hours.
- (3) Have private visiting pursuant to a reasonable written visitation policy.

##### **B. ACCESS:**

Immediate access by representatives of Human Services Department, Health and Environment Department, Ombudsman, personal physician and, subject to resident's consent, immediate family or other relatives or visitors following notification of staff person in charge and presentation of valid identification. Reasonable access by providers of health, social, legal or other services must be assured.

##### **C. GRIEVANCES:**

Present grievances on one's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and join with other residents or individuals within or outside of the facility to work for improvements in resident care.

##### **D. FINANCES:**

Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

- (1) A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorize this action in writing. The facility shall obtain separate authorization for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence.

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(2) Any resident funds held or controlled by the facility, and any earnings from them, shall be credited to the resident and may not be commingled with other funds or property except that of other residents.

(3) The facility shall furnish a resident, the resident's guardian, or a representative designated by the resident with at least a quarterly statement of all funds held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge.

(4) The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.

### E. ADMISSION INFORMATION:

Be fully informed in writing prior to or at the time of admission, of all services and the charges for these services, and be informed in writing, during the resident's stay, of any changes in services available or in charges for services, as follows:

(1) No person may be admitted to a facility without that person or that person's guardian or designated representative signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short-term care, the information required under these regulation.

(a) An accurate description of the basic services provided by the facility, the rate charged for those services, and the method of payment for them;

(b) Information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

(c) The method for notifying residents of a change in rates or fees;

(d) Terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge.

(e) Terms of holding and charging for a bed during a resident's temporary absence.

(f) Conditions for involuntary discharge or transfer, including transfers within the facility;

(g) Information about the availability of storage space for personal effects; and

(h) A summary of residents' rights recognized and protected by this section and all facility policies and regulations governing resident conduct and responsibilities. No statement of admission information may be in conflict with any part of these regulations.

### F. TREATMENT:

Be treated with courtesy, respect, and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified, and registered providers under contract with the facility.

### G. PRIVACY:

Have physical and emotional privacy in treatment, living arrangements, and in caring for personal needs, including, but not limited to:

(1) Privacy for visits by spouse. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

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(2) Privacy concerning health care. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

(3) Confidentiality of health and personnel records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or third-party payment contracts.

### H. WORK:

Not be required to perform work for the facility, but may work for the facility if:

(1) The work is included by the physician for therapeutic purposes in the resident's plan of care; and

(2) The work is ordered by the resident's physician and does not threaten the health, safety, or welfare of the resident or others.

(3) The resident volunteers for work and such activities is not contra-indicated by physician.

### I. OUTSIDE ACTIVITIES:

Meet with and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

### J. PERSONAL POSSESSIONS:

Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably, secure manner.

### K. TRANSFER, DISCHARGE AND BEDHOLD:

Involuntary transfer shall be conducted only for resident's welfare, health and safety of others, or failure to pay. Reasons other than failure to pay must be documented by a physician in resident's record. Prior to transfer the facility must notify resident and/or next of kin or responsible party of right to appeal and name and address of ombudsman.

### L. ABUSE AND RESTRAINTS:

Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraint" includes, but is not limited to, any article, device, or garment which interferes with the free movement of the resident and which the resident is unable to remove easily.

### M. CARE:

Receive adequate and appropriate care within the capacity of the facility.

### N. CHOICE OF PROVIDER:

Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice. The pharmacist of choice must be able to supply drugs and/or Biologicals in such a manner as is consistent with the facility's medication delivery system.

### O. CARE PLANNING:

Be fully informed of one's treatment and care and participate in the planning of that treatment and care, unless contra-indicated by physician order.

**P. RELIGIOUS ACTIVITY:**

Participate in religious activities and services, of resident's choice and meet privately with clergy.

**Q. NON-DISCRIMINATORY TREATMENT:**

Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

(1) No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment. A facility only part of which is certified for Medicare/Medicaid reimbursement under Title XVIII/XIX of the Social Security Act is not prohibited from assigning a resident to the certified part of the facility because of the source of payment for the resident's care is Medicare/Medicaid.

(2) Facilities shall offer and provide an identical package of basic services meeting the requirements of these regulations to all individuals regardless of the sources of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. A facility which elects to offer enhancements to basic services to its residents must provide all residents with a detailed explanation of enhanced services and the additional charges for these services.

(3) If a facility offers at extra charge additional services which are not covered by the facility's provider agreement under which it provides Medicaid and Medicare services, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

(4) No facility may require, offer or provide an identification tag for a resident that publicly identifies the source from which the facility's charges for that resident's care are paid.

**R. INCOMPETENCE:**

If a resident is found incompetent by a court under New Mexico's Probate Code, (Sections 45-5-101 through 45-5-432 NMSA 1978), and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian and/or conservator.

**S. CORRECTIONS CLIENTS:**

Rights established under this section do not, except as determined by the department, apply to residents in a facility who are in the legal custody of the department for correctional purposes.

**T. NOTIFICATION:**

(1) Serving Notice: Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

(2) Amendments: All amendments to the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident and guardian, if any, at the time the



amendment is put into effect. The facility shall provide the resident, guardian, if any, and each member of the facility's staff with a copy of all amendments.

(3) Posting: Copies of the resident's rights provided under these regulations and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

U. ENCOURAGEMENT AND ASSISTANCE:

Each facility shall encourage and assist residents to exercise their rights as residents and citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section. [5-2-89; 7.9.2.22 NMAC – Rn, 7 NMAC 9.2.22, 8-31-00]

**New York**

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Effective Date: 07/30/97

Title: Section 415.3 - Residents' rights

415.3 Residents' rights.

(a) The facility shall ensure that all residents are afforded their right to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs and communication with and access to persons and services inside and outside the facility. The facility shall protect and promote the rights of each resident, and shall encourage and assist each resident in the fullest possible exercise of these rights as set forth in subdivisions (b) - (h) of this section. The facility shall also consult with residents in establishing and implementing facility policies regarding residents' rights and responsibilities.

(1) The facility shall advise each member of the staff of his or her responsibility to understand, protect and promote the rights of each resident as enumerated in this section.

(2) The facility shall fully inform the resident and the resident's designated representative both orally and in writing in a method of communication that the individuals understand the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be acknowledged in writing. A summary of such information shall be provided by the Department and posted in the facility in large print and in language that is easily understood.

(3) The written information provided pursuant to paragraph (2) of this subdivision shall include but not be limited to a listing of those resident rights and facility responsibilities enumerated in subdivisions (b) through (h) of this section. The facility's policies and procedures shall also be provided to the resident and the resident's designated representative upon request.

(4) The facility shall communicate to the resident an explanation of his or her responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents.

(5) Any written information required by this Part to be posted shall be posted conspicuously in a public place in the facility that is frequented by residents and visitors, posted at wheelchair height.

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(b) Admission rights. The nursing home shall protect and promote the rights of residents and potential residents by establishing and implementing policies which ensure that the facility:

- (1) shall not require a third party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;
- (2) shall not charge, solicit, accept or receive, in addition to any amount otherwise required to be paid by third party payors, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility except that arrangements for prepayment for basic services not exceeding three months shall not be precluded by this paragraph;
- (3) shall not require residents or potential residents to waive their rights to Medicare or Medicaid benefits;
- (4) shall not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits;
- (5) shall obey all pertinent state and local laws which prohibit discrimination against individuals entitled to Medicaid benefits;
- (6) may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide the facility payment from the resident's income or resources;
- (7) may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified at the time of admission as included in basic nursing home services, so long as the facility gives proper notice of the availability and cost of these items and services to the resident and does not condition the resident's admission or continued stay on the request for and receipt of such additional items and services; and
- (8) may solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility.

(c) Protection of Legal Rights. (1) Each resident shall have the right to:

- (i) exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and New York State including the right to vote, with access arranged by the facility and to this end may voice grievances without discrimination or reprisal for voicing the grievances, and have a right of action for damages or other relief for deprivations or infringements of his or her right to adequate and proper treatment and care established by any applicable statute, rule, regulation or contract;
- (ii) recommend changes in policies and services to facility staff and/or to any outside representatives, free of interference, coercion, discrimination, restraint or reprisal from the facility and to obtain prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;
- (iii) exercise his or her individual rights or have his or her rights exercised by a person authorized by state law;
- (iv) inspect all records including clinical records pertaining to himself or herself within 24 hours after an oral or written request to the facility and, after receipt of such records for inspection, to purchase at a cost which is the lower of the cost incurred by the facility in production of the record or 75 cents per page, photocopies of the records or any

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portions of them upon request and two working days advance notice to the facility. The designated representative who has authority to make health care decisions for the resident shall likewise have access to the resident's records in accordance with this subparagraph, State law and the rights of a competent resident to deny such access. A resident or such designated representative shall not be denied access to the clinical records solely because of inability to pay.

(v) examine the results of the most recent survey of the facility conducted by federal or State surveyors including any statement of deficiencies, any plan of correction in effect with respect to the facility and any enforcement actions taken by the Department of Health. The results shall also be made available by the facility for examination. They shall be made available in a place readily accessible to residents and designated representatives without staffing assistance;

(vi) receive information from agencies acting as resident advocates, and be afforded the opportunity to contact these agencies;

(vii) be free from verbal, sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints except those restraints authorized in accordance with section 415.4 of this Part;

(viii) exercise his or her civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, which shall not be infringed; and (ix) request, or have the resident's designated representative request, and be provided information concerning his or her specific assignment to a patient classification category as contained in Appendix 13-A of this Title, entitled, "Patient Categories and Case Mix Indices Under Resource Utilization Group (RUG-II) Classification System."

(2) With respect to its responsibilities to the resident the facility shall:

(i) furnish a written description of legal rights which includes:

(a) a description of the manner of protecting personal funds, under subdivision (h) of section 415.26 of this Part; and

(b) a statement that the resident may file a complaint with the facility or the New York State Department of Health concerning resident abuse, neglect, mistreatment and misappropriation of resident property in the facility. The statement shall include the name, address and telephone number of the office established by the Department to receive complaints and of the State Office for the Aging Ombudsmen Program;

(ii) promptly notify the resident and the resident's designated representative when there is:

(a) a change in room. Except when the medical condition of the resident requires an immediate room change or an emergency situation has developed, such change in room shall require prior notice and consultation with the resident as well as reasonable accommodation of any resident needs or preferences;

(b) a change in roommate assignment which shall be acceptable, where possible, to all affected residents; or

(c) a change in resident rights under Federal or State law or regulations as specified in this section;

(iii) record and periodically update the address and phone number of the resident's designated representative;

(iv) provide immediate access to any resident by the following:

(a) any representative of the Secretary of Health and Human Services;

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- (b) any representative of the Department of Health;
  - (c) the resident's responsible physician;
  - (d) ombudsmen who are duly certified and designated by the State Office for the Aging;
  - (e) representatives of the Commission on Quality of Care for the Mentally Disabled which is responsible for the protection and advocacy system for developmentally disabled individuals and mentally ill individuals; (f) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time, and
  - (g) 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;
  - (v) post the names, addresses and telephone numbers of all pertinent state client advocacy groups and 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;
  - (vi) comply with the provisions of Part 411 of this Title regarding Ombudsmen Access to Residential Health Care Facilities; and
  - (vii) inform residents of the facility's visiting hour policies.
- (d) Right to Privacy. Each resident shall have the right to:
- (1) personal privacy and confidentiality of his or her personal and clinical records which shall reflect:
    - (i) accommodations, medical treatment, written and telephone communications, personal care, associations and communications with persons of his or her choice, visits, and meetings of family and resident groups. Resident and family groups shall be provided with private meeting space and residents shall be given access to a private area for visits or solitude. Such requirement shall not require the facility to provide a private room for each resident; and
    - (ii) the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when:
      - (a) the resident is transferred to another health care institution; or
      - (b) record release is required by law;
  - (2) privacy in written communications, including the right to:
    - (i) send and receive mail promptly that is unopened; and
    - (ii) have access to stationery, postage and writing implements at the resident's own expense; and
  - (3) regular access to the private use of a telephone that is wheelchair accessible and usable by hearing impaired and visually impaired residents.
- (e) Right to Clinical Care and Treatment. (1) Each resident shall have the right to:
- (i) adequate and appropriate medical care, and to be fully informed by a physician in a language or in a form that the resident can understand, using an interpreter when necessary, of his or her total health status, including but not limited to, his or her medical condition including diagnosis, prognosis and treatment plan. Residents shall have the right to ask questions and have them answered;
  - (ii) refuse to participate in experimental research and to refuse medication and treatment after being fully informed and understanding the probable consequences of such actions;
  - (iii) choose a personal attending physician from among those who agree to abide by all federal and state regulations and who are permitted to practice in the facility;
  - (iv) be fully informed in advance about care and treatment and of any changes in that care

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or treatment that may affect the resident's well-being;

(v) participate in planning care and treatment or changes in care and treatment. Residents adjudged incompetent or otherwise found to be incapacitated under the laws of the State of New York shall have such rights exercised by a designated representative who will act in their behalf in accordance with State law; and

(vi) self-administer drugs if the interdisciplinary team, as defined by Section 415.11, has determined for each resident that this practice is safe.

(2) With respect to its responsibilities to the resident, the facility shall:

(i) inform each resident of the name, office address, phone number and specialty of the physician responsible for his or her own care.

(ii) except in a medical emergency, consult with the resident immediately if the resident is competent, and notify the resident's physician and designated representative within 24 hours when there is:

(a) an accident involving the resident which results in injury requiring professional intervention;

(b) a significant improvement or decline in the resident's physical, mental, or psychosocial status in accordance with generally accepted standards of care and services;

(c) a need to alter treatment significantly; or

(d) a decision to transfer or discharge the resident from the facility as specified in subdivision (h) of this section; and

(iii) provide all information a resident or the resident's designated representative when permitted by State law, may need to give informed consent for an order not to resuscitate and comply with the provisions of section 405.43 of this Subchapter regarding orders not to resuscitate. Upon resident request the facility shall furnish a copy of the pamphlet, "Do Not Resuscitate Orders - A Guide for Patients and Families". (f) Residential Rights. Each resident shall have the right to:

(1) refuse to perform services for the facility. The resident may perform such services, if he or she chooses, only when:

(i) there is work available in the facility that the resident is capable of safely performing;

(ii) the facility has documented the need or desire for work in the plan of care;

(iii) the plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iv) compensation for paid services is at or above prevailing rates; and

(v) the resident agrees to the work arrangement described in the plan of care;

(2) retain, store securely 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 the resident or other residents in which case the facility shall explore alternatives through discussion with the resident, the resident council or interdisciplinary care team, and provide or assist in the arrangement of storage for possessions. The resident shall have the right to locked storage space in his or her room;

(3) share a room with his or her spouse, relative or partner when these residents live in the same facility and both consent to the arrangement. If a spouse, relative or partner resides in a location out of the facility, the resident shall be assured of privacy for visits;

(4) participate in the established residents' council;

(5) meet with, and participate in activities of social, religious and community groups at his or her discretion; and

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(6) receive, upon request, kosher food or food products prepared in accordance with the Hebrew orthodox religious requirements when the resident, as a matter of religious belief, desires to observe Jewish dietary laws.

(g) Financial Rights. (1) Each resident shall have the right to manage his or her financial affairs or authorize in writing the facility to manage personal finances in accordance with paragraph (5) of subdivision (h) of section 415.26 of this Part. The facility may not require residents to deposit their personal funds with the facility;

(2) With respect to its responsibilities to the resident, the facility shall:

(i) inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing home or, when the resident becomes eligible for Medicaid of:

(a) the items and services that are included in nursing home services under the State plan and for which the resident may not be charged;

(b) 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) the clear distinction between the two lists required by clauses (a) and (b) of this subparagraph;

(ii) inform each resident when changes are made to the items and services specified in clauses (a) and (b) of subparagraph (i) of this paragraph;

(iii) inform each resident verbally and in writing before, or at the time of admission, and periodically when changes occur during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered by sources of third party payment or by the facility's basic per diem rate; and

(iv) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits as well as a description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which will determine the extent of a couple's non-exempt resources at the time of institutionalization and attribute to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels.

(h) Transfer and discharge rights. Transfer and discharge shall include movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge shall not refer to movement of a resident to a bed within the same certified facility. (1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility.

(a) The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

(2) the transfer or discharge is appropriate because the resident's health has improved

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sufficiently so the resident no longer needs the services provided by the facility; or  
(3) the health or safety of individuals in the facility would otherwise be endangered, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to safely address the problem.

(b) Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

(c) Transfer or discharge shall also be permissible when the facility discontinues operation and has received approval of its plan of closure in accordance with subdivision (i) of Section 401.3 of this Subchapter.

(ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by:

(a) the resident's physician and interdisciplinary care team, as appropriate, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (I) of this paragraph; and

(b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under sub clause (3) of clause (a) of subparagraph (I) of this paragraph;

(iii) before it transfers or discharges a resident:

(a) notify the resident and designated representative of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in subparagraph (v) of this paragraph;

(iv) provide the notice of transfer or discharge required under subparagraph (iii) of this paragraph at least 30 days before the resident is transferred or discharged, except that notice shall be given as soon as practicable before transfer or discharge under the following circumstances:

(a) the safety of individuals in the facility would be endangered;

(b) the health of individuals in the facility would be endangered;

(c) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(d) an immediate transfer or discharge is required by the resident's urgent medical needs;  
or

(e) the transfer or discharge is being made in compliance with a request by the resident.

(v) include in the written notice specified in subparagraph (iii) of this paragraph the following:

(a) for transfers or discharges a statement that the resident has the right to appeal the action to the State Department of Health in accordance with paragraphs (2) and (3) of this subdivision. The statement shall include a current phone number for the Department which can be used to initiate an appeal;

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(b) the name, address and telephone number of the State long term care ombudsman;  
(c) for nursing facility residents who are mentally ill or who have developmental disabilities, the mailing address and telephone number of the Commission on Quality of Care for the Mentally Disabled which is responsible for the protection and advocacy of such individuals; and

(d) a statement that, if the resident appeals the transfer or discharge to the Department of Health within 15 days of being notified of such transfer or discharge, the resident may remain in the facility pending an appeal determination. This clause shall not apply to transfers or discharges based on clauses (a), (b), (d) or (e) of subparagraph (iv) of this paragraph; and

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility including an opportunity to participate in deciding where to go.

(2) Appeals of transfer and discharge decisions to the Department of Health as permitted by clause (a) of subparagraph (v) of paragraph (1) of this subdivision shall be in accordance with the following:

(I) the resident has the right to:

(a) a pre-transfer on-site appeal determination under the auspices of the Department of Health, provided that the resident has appealed the transfer or discharge within 15 days of the notice, except in cases involving imminent danger to others in the facility, and

(b) remain in the facility pending an appeal determination, or

(c) a post-transfer appeal determination within 30 days of transfer if the resident did not request an appeal determination prior to transfer, or

(d) return to the facility to the first available bed if the resident wins the appeal; and

(e) examine his/her medical records.

(ii) the presiding officer shall have the power to obtain medical and psychosocial consultations,

(iii) the nursing home shall have the burden of proof that the transfer is/was necessary and the discharge plan appropriate,

(iv) in cases involving imminent danger to others in the facility, an involuntary transfer may be arranged before a hearing. However, the facility shall be required to hold the resident's bed until after the hearing decision. If the transfer is found to be appropriate, the facility may charge a private pay resident for the time the bed was held. If the transfer is found to be inappropriate, the facility shall readmit the resident to his or her bed on a priority basis,

(v) the department shall conduct a review and render a decision on the appeal as required in clause (a) of subparagraph (I) of this paragraph within 15 days of the request.

(3) If an appeal decision rendered after discharge finds the discharge or transfer to be inappropriate, the facility shall readmit the resident prior to admitting any other person.

(4) The facility shall establish and implement a bed-hold policy and a readmission policy that reflect at least the following:

(I) At the time of admission and again at the time of transfer for any reason, the facility shall verbally inform and provide written information to the resident and the designated representative that specifies:

(a) the duration of the bed-hold policy during which the resident is permitted to return and resume residence in the facility; and



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(b) the facility's policies regarding bed-hold periods, which must be consistent with subparagraph (iii) of this paragraph, permitting a resident to return.

(ii) At the time for therapeutic leave, a nursing home shall provide written notice to the resident and the designated representative, which specifies the duration of the bed-hold policy described in subparagraph (I) of this paragraph.

(iii) A nursing home shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed hold period is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(a) requires the services provided by the facility; and

(b) is eligible for Medicaid nursing home services.

(iv) A nursing home shall establish and follow a written policy under which a resident who has resided in the nursing home for 30 days or more and who has been hospitalized or who has been transferred or discharged on therapeutic leave without being given a bed-hold is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:

(a) requires the services provided by the facility; and

(b) is eligible for Medicaid nursing home services.

(5) With regard to the assurance of equal access to quality care, the facility shall establish and maintain identical policies and practices regarding transfer, discharge and the provision of all required services for all individuals regardless of source of payment.

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**North Carolina**

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§ 131E-117. Declaration of patient's rights.

All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

(1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;

(2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;

(3) To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection;

(4) To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision, including signed acknowledgements by the patient, shall be retained by the facility in the patient's file;

(5) To receive respect and privacy in the patient's medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall

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be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;

(6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;

(7) To receive from the administrator or staff of the facility a reasonable response to all requests;

(8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage;

(9) To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days' notice.

(10) To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;

(11) To enjoy privacy in the patient's room;

(12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's personal behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;

(13) To not be required to perform services for the facility without personal consent and the written approval of the attending physician;

(14) To retain, to secure storage for, and to use personal clothing and possessions, where reasonable;

(15) To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record;

(16) To be notified within 10 days after the facility has been issued a provisional license because of violation of licensure regulations or received notice of revocation of license

by the North Carolina Department of Health and Human Services and the basis on which the provisional license or notice of revocation of license was issued. The patient's responsible family member or guardian shall also be notified.

(1977, c. 897, s. 1; 1983, c. 775, s. 1; 1989, c. 75; 1997-443, s. 11A.118(a).)

### **North Dakota**

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#### 50-10.2-02.Residents' rights-Implementation.

1. All facilities shall, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or any existing legal guardian of the resident a statement of the resident's rights while living in the facility. Within thirty days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident, and there after annually so long as the resident remains in the facility. The statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct. Facilities shall treat residents in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:

- a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
- b. The right to have private meetings, associations, and communications with any person of the resident's choice with in the facility.
- c. The right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.
- d. The right to send and receive unopened personal mail and the right of access to and use of telephones for private conversations.
- e. The right to assured private visits by one's spouse, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.
- f. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. If such a trust is established, then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with an explanation by the facility to the resident or the person legally responsible for the resident.

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- g. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and the charges for those services, including ancillary charges. Residents, or their legal guardians, must be informed at least thirty days prior to any change in the costs or availability of the services. No facility may demand or receive any advance payment or gratuity to assure admission.
- h. The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment, to be discharged from the facility upon written request, and to be notified by the resident's attending physician of the medical consequences of any such actions.
- I. The right to have privacy in treatment and in caring for personal needs, to use personal belongings, to have security in storing and using personal possessions, and to have confidentiality in the treatment of personal and medical records. The resident has the right to view, and authorize release of, any personal or medical records.
- j. The right to be treated courteously, fairly, and with the fullest measure of dignity.
- k. The right to be free from mental and physical abuse and the right to be free from physical or chemical restraint except in documented emergencies or when necessary to protect the resident from injury to self or to others. In such cases, the restraint must be authorized and documented by a physician for a limited period of time and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.
- l. The right not to be transferred or discharged except for:
- (1) Medical reasons;
  - (2) The resident's welfare or that of other residents; or
  - (3) Nonpayment of one's rent or fees.
- Residents maybe temporarily transferred during times of remodeling.
- m. The right to receive a thirty day advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.
- n. The right to refuse to perform services on behalf of the facility, unless agreed to by the resident or legal guardian and established in the plan of care.
- o. The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.
- p. The right to have each facility display a notice that the following information is available for public review and make the information available on request:
- (1) A complete copy of every inspection report, deficiency report, and plan of correction the facility received during the previous two years.
  - (2) The facility's grievance process.
  - (3) A copy of the statement of ownership, board membership, and partners.

- (4) A statement of ownership setting forth any conflict of interest in the operation of the facility.
- q. The right to a pharmacist of the resident's choice irrespective of the type of medication distribution system used by the facility.
- r. The right to not be discriminated against by a facility in the admissions process or in the provision of appropriate care on the basis of the resident's source of payment to the facility. Any applicant for admission to a facility who is denied admission must be given the reason for the denial in writing upon request.
- s. The right of residents and their families to organize, maintain, and participate in resident advisory and family councils.
- t. The right of residents receiving services performed by a provider from outside the facility to be informed, on request, of the identity of the provider.
2. Waiver of any of the rights guaranteed by this chapter may not be made a condition of admission to a facility.
3. Each facility shall prepare a written plan and provide staff training to implement this chapter.
4. The department shall hold open meetings at least once every two years in each region established by the governor's executive order 1978-12 dated October 5, 1978, having a facility, to advise and to facilitate communication and cooperation between facility personnel and the residents in their mutual efforts to improve resident care; and to document concerns and issues needing to be addressed. Appropriate advance notice must be given.
5. The department shall develop and coordinate with the facility licensing and regulatory agencies a relocation plan in the event a facility is decertified or unlicensed.
- 50-10.2-03. Rule making authority of department. The department may adopt rules in accordance with chapter 28-32, consistent with and necessary for the implementation and enforcement of this chapter through the ombudsman program under chapter 50-10.1.
- 50-10.2-04. Enforcement-Injunction. Any facility that violates this chapter may be enjoined by a district court. Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in the name of the state. Actions for injunction under this section must be prosecuted in the county where the case arises.

## Ohio

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### 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

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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.

§ 3721.12.1] § 3721.121. Criminal records check for prospective employees providing direct care to older adult.

(A) As used in this section:

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(1) "Adult day-care program" means a program operated pursuant to rules adopted by the public health council under [section 3721.04](#) of the Revised Code and provided by and on the same site as homes licensed under this chapter.

(2) "Applicant" means a person who is under final consideration for employment with a home or adult day-care program in a full-time, part-time, or temporary position that involves providing direct care to an older adult. "Applicant" does not include a person who provides direct care as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(3) "Criminal records check" and "older adult" have the same meanings as in [section 109.572](#) [109.57.2] of the Revised Code.

(4) "Home" means a home as defined in [section 3721.10](#) of the Revised Code.

(B) (1) Except as provided in division (I) of this section, the chief administrator of a home or adult day-care program shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check with respect to each applicant. If an applicant for whom a criminal records check request is required under this division does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation in a criminal records check, the chief administrator shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the applicant. Even if an applicant for whom a criminal records check request is required under this division presents proof of having been a resident of this state for the five-year period, the chief administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) A person required by division (B)(1) of this section to request a criminal records check shall do both of the following:

(a) Provide to each applicant for whom a criminal records check request is required under that division a copy of the form prescribed pursuant to division (C)(1) of [section 109.572](#) [109.57.2] of the Revised Code and a standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section, and obtain the completed form and impression sheet from the applicant;

(b) Forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation.

(3) An applicant provided the form and fingerprint impression sheet under division (B)(2)(a) of this section who fails to complete the form or provide fingerprint impressions shall not be employed in any position for which a criminal records check is required by this section.

(C) (1) Except as provided in rules adopted by the director of health in accordance with division (F) of this section and subject to division (C)(2) of this section, no home or adult day-care program shall employ a person in a position that involves providing direct care to an older adult if the person has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31,

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2907.32, 2907.321, 2907.322, 2907.323 [2907.32.1, 2907.32.2, 2907.32.3], 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161 [2923.16.1], 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code.

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (C)(1)(a) of this section.

(2) (a) A home or an adult day-care program may employ conditionally an applicant for whom a criminal records check request is required under division (B) of this section prior to obtaining the results of a criminal records check regarding the individual, provided that the home or program shall request a criminal records check regarding the individual in accordance with division (B)(1) of this section not later than five business days after the individual begins conditional employment. In the circumstances described in division (I)(2) of this section, a home or adult day-care program may employ conditionally an applicant who has been referred to the home or adult day-care program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and for whom, pursuant to that division, a criminal records check is not required under division (B) of this section.

(b) A home or adult day-care program that employs an individual conditionally under authority of division (C)(2)(a) of this section shall terminate the individual's employment if the results of the criminal records check requested under division (B) of this section or described in division (I)(2) of this section, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending thirty days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the offenses listed or described in division (C)(1) of this section, the home or program shall terminate the individual's employment unless the home or program chooses to employ the individual pursuant to division (F) of this section. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of [section 4141.29](#) of the Revised Code if the individual makes any attempt to deceive the home or program about the individual's criminal record.

(D) (1) Each home or adult day-care program shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of [section 109.572](#) [109.57.2] of the Revised Code for each criminal records check conducted pursuant to a request made under division (B) of this section.

(2) A home or adult day-care program may charge an applicant a fee not exceeding the amount the home or program pays under division (D)(1) of this section. A home or program may collect a fee only if both of the following apply:

(a) The home or program notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment;

(b) The medical assistance program established under [Chapter 5111](#) of the Revised Code does not reimburse the home or program the fee it pays under division (D)(1) of this section.



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(E) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of [section 149.43](#) of the Revised Code and shall not be made available to any person other than the following:

- (1) The individual who is the subject of the criminal records check or the individual's representative;
- (2) The chief administrator of the home or program requesting the criminal records check or the administrator's representative;
- (3) The administrator of any other facility, agency, or program that provides direct care to older adults that is owned or operated by the same entity that owns or operates the home or program;
- (4) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant;
- (5) Any person to whom the report is provided pursuant to, and in accordance with, division (I)(1) or (2) of this section.

(F) In accordance with [section 3721.11](#) of the Revised Code, the director of health shall adopt rules to implement this section. The rules shall specify circumstances under which a home or adult day-care program may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section but meets personal character standards set by the director.

(G) The chief administrator of a home or adult day-care program shall inform each individual, at the time of initial application for a position that involves providing direct care to an older adult, that the individual is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the individual comes under final consideration for employment.

(H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an individual who a home or adult day-care program employs in a position that involves providing direct care to older adults, all of the following shall apply:

- (1) If the home or program employed the individual in good faith and reasonable reliance on the report of a criminal records check requested under this section, the home or program shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate;
- (2) If the home or program employed the individual in good faith on a conditional basis pursuant to division (C)(2) of this section, the home or program shall not be found negligent solely because it employed the individual prior to receiving the report of a criminal records check requested under this section;
- (3) If the home or program in good faith employed the individual according to the personal character standards established in rules adopted under division (F) of this section, the home or program shall not be found negligent solely because the individual prior to being employed had been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section.

(I) (1) The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or

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temporary staff for positions involving the direct care of older adults and both of the following apply:

(a) The chief administrator receives from the employment service or the applicant a report of the results of a criminal records check regarding the applicant that has been conducted by the superintendent within the one-year period immediately preceding the applicant's referral;

(b) The report of the criminal records check demonstrates that the person has not been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section, or the report demonstrates that the person has been convicted of or pleaded guilty to one or more of those offenses, but the home or adult day-care program chooses to employ the individual pursuant to division (F) of this section.

(2) The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant and may employ the applicant conditionally as described in this division, if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and if the chief administrator receives from the employment service or the applicant a letter from the employment service that is on the letterhead of the employment service, dated, and signed by a supervisor or another designated official of the employment service and that states that the employment service has requested the superintendent to conduct a criminal records check regarding the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of or pleaded guilty to any offense listed or described in division (C)(1) of this section, that, as of the date set forth on the letter, the employment service had not received the results of the criminal records check, and that, when the employment service receives the results of the criminal records check, it promptly will send a copy of the results to the home or adult-care program. If a home or adult day-care program employs an applicant conditionally in accordance with this division, the employment service, upon its receipt of the results of the criminal records check, promptly shall send a copy of the results to the home or adult day-care program, and division (C)(2)(b) of this section applies regarding the conditional employment.

HISTORY: 146 v S 160 (Eff 1-27-97); 147 v S 96 (Eff 6-11-97); 147 v H 18. Eff 1-30-98; 150 v H 95, § 1, eff. 9-26-03.

§ 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.

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- (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

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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.

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- (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:

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- (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;

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- (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.

§ 3721.16. Residents' rights concerning transfer or discharge.

For each resident of a home, notice of a proposed transfer or discharge shall be in accordance with this section.

(A) (1) The administrator of a home shall notify a resident in writing, and the resident's sponsor in writing by certified mail, return receipt requested, in advance of any proposed transfer or discharge from the home. The administrator shall send a copy of the notice to

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the state department of health. The notice shall be provided at least thirty days in advance of the proposed transfer or discharge, unless any of the following applies:

- (a) The resident's health has improved sufficiently to allow a more immediate discharge or transfer to a less skilled level of care;
- (b) The resident has resided in the home less than thirty days;
- (c) An emergency arises in which the safety of individuals in the home is endangered;
- (d) An emergency arises in which the health of individuals in the home would otherwise be endangered;
- (e) An emergency arises in which the resident's urgent medical needs necessitate a more immediate transfer or discharge.

In any of the circumstances described in divisions (A)(1)(a) to (e) of this section, the notice shall be provided as many days in advance of the proposed transfer or discharge as is practicable.

(2) The notice required under division (A)(1) of this section shall include all of the following:

- (a) The reasons for the proposed transfer or discharge;
- (b) The proposed date the resident is to be transferred or discharged;
- (c) The proposed location to which the resident is to be transferred or discharged;
- (d) Notice of the right of the resident and the resident's sponsor to an impartial hearing at the home on the proposed transfer or discharge, and of the manner in which and the time within which the resident or sponsor may request a hearing pursuant to [section 3721.161](#) [3721.16.1] of the Revised Code;
- (e) A statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date;
- (f) The address of the legal services office of the department of health;
- (g) The name, address, and telephone number of a representative of the state long-term care ombudsperson program and, if the resident or patient has a developmental disability or mental illness, the name, address, and telephone number of the Ohio legal rights service.

(B) No home shall transfer or discharge a resident before the date specified in the notice required by division (A) of this section unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.

(C) Transfer or discharge actions shall be documented in the resident's medical record by the home if there is a medical basis for the action.

(D) A resident or resident's sponsor may challenge a transfer or discharge by requesting an impartial hearing pursuant to [section 3721.161](#) [3721.16.1] of the Revised Code, unless the transfer or discharge is required because of one of the following reasons:

- (1) The home's license has been revoked under this chapter;
- (2) The home is being closed pursuant to section 3721.08, sections 5111.35 to 5111.62, or [section 5155.31](#) of the Revised Code;
- (3) The resident is a recipient of Medicaid and the home's participation in the Medicaid program has been involuntarily terminated or denied by the federal government;



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(4) The resident is a beneficiary under the Medicare program and the home's certification under the Medicare program has been involuntarily terminated or denied by the federal government.

(E) If a resident is transferred or discharged pursuant to this section, the home from which the resident is being transferred or discharged shall provide the resident with adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, and the home or alternative setting to which the resident is to be transferred or discharged shall have accepted the resident for transfer or discharge.

(F) At the time of a transfer or discharge of a resident who is a recipient of Medicaid from a home to a hospital or for therapeutic leave, the home shall provide notice in writing to the resident and in writing by certified mail, return receipt requested, to the resident's sponsor, specifying the number of days, if any, during which the resident will be permitted under the Medicaid program to return and resume residence in the home and specifying the Medicaid program's coverage of the days during which the resident is absent from the home. An individual who is absent from a home for more than the number of days specified in the notice and continues to require the services provided by the facility shall be given priority for the first available bed in a semi-private room.

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

[§ 3721.16.1] § 3721.161. Resident or sponsor may request hearing challenging proposed transfer or discharge.

(A) Not later than thirty days after the date a resident or the resident's sponsor receives notice of a proposed transfer or discharge, whichever is later, the resident or resident's sponsor may challenge the proposed transfer or discharge by submitting a written request for a hearing to the state department of health. On receiving the request, the department shall conduct a hearing in accordance with [section 3721.162](#) [3721.16.2] of the Revised Code to determine whether the proposed transfer or discharge complies with division (A)(30) of [section 3721.13](#) of the Revised Code.

(B) Except in the circumstances described in divisions (A)(1)(a) to (e) of [section 3721.16](#) of the Revised Code, if a resident or resident's sponsor submits a written hearing request not later than ten days after the resident or the resident's sponsor received notice of the proposed transfer or discharge, whichever is later, the home shall not transfer or discharge the resident unless the department determines after the hearing that the transfer or discharge complies with division (A)(30) of [section 3721.13](#) of the Revised Code or the department's determination to the contrary is reversed on appeal.

(C) If a resident or resident's sponsor does not request a hearing pursuant to division (A) of this section, the home may transfer or discharge the resident on the date specified in the notice required by division (A) of [section 3721.16](#) of the Revised Code or thereafter, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.

(D) If the resident or resident's sponsor requests a hearing in writing pursuant to division (A) of this section and the home transfers or discharges the resident before the department issues a hearing decision, the home shall readmit the resident in the first available bed if the department determines after the hearing that the transfer or discharge

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does not comply with division (A)(30) of [section 3721.13](#) of the Revised Code or the department's determination to the contrary is reversed on appeal.

HISTORY: 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.

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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

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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:

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(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

### Oklahoma

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§63-1-1918. Rights and responsibilities - Violations - Penalties.

A. All principles enumerated in this section shall be posted in a conspicuous, easily accessible location in each facility. Each resident and personally appointed representative of the resident, if any, shall be verbally advised and provided a written copy of such principles prior to or upon admission to the facility. The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The facility shall make available to each resident, upon reasonable request, a current written statement of such rights and responsibilities.

B. A statement of rights and responsibilities shall include, but not be limited to, the following:

1. Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed upon and the facility shall encourage and assist in the exercise of these rights;
  2. Every resident shall have the right to have private communications, including telephonic communications and visits and consultations with a physician or an attorney, and meetings of family and resident groups or any other person or persons of the resident's choice, and may send and promptly receive, unopened, the resident's personal mail;
  3. a. Every resident shall have the right, without fear of reprisal or discrimination, to:
    - (1) present grievances with respect to treatment or care that is or fails to be furnished on behalf of the resident or others to:
      - (a) the facility's staff,
      - (b) the facility's administrator,
      - (c) the facility's attending physician,
      - (d) the resident's personal physician, if any,
      - (e) governmental officials, or
      - (f) any other person, and
    - (2) organize or to join with other residents or individuals within or outside of the facility to work for improvements in resident care.
  - b. The family of a resident shall have the right to meet in the facility with other residents' families.
  - c. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;
4. Every resident shall have the right to manage such resident's own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident

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shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident, unless adjudged to be mentally incapacitated, shall be fully informed by the resident's attending physician of the resident's medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in the planning of care and treatment or changes in care and treatment. Every resident shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions unless adjudged to be mentally incapacitated;

6. Every resident shall receive respect and privacy in the medical care program of the resident. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential, and shall include such documentation or information so as to alert a health care provider or an emergency medical care facility of the existence of a directive to physicians or a living will;

7. Every resident shall have the right to reside and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered;

8. a. Every resident shall be informed by the facility, at the time of admission, of the facility's policy regarding the provision of hospice services. The facility's policy shall:

- (1) specify whether the facility provides hospice services, either directly or through contractual arrangements with other hospice providers,
- (2) specify whether the facility permits hospice services to be provided in the facility by any other hospice services or only by hospice services contracted by the facility,
- (3) provide that each resident shall receive a list of hospice services with which the facility contracts, and
- (4) provide for complete disclosure to the resident of the facility's relationship with any hospice service that is the result of ownership or an ownership interest of five percent (5%) or more.

b. A facility shall, at the point that a resident requires hospice services, again inform the resident or the personally appointed representative of the resident, if any, verbally and in writing of the resident's right to hospice services pursuant to the facility's policy at the time of the resident's admission;

9. Every resident shall have the right to receive notice before the room or roommate of the resident in the facility is changed and if the resident has a telephone in his or her room, the resident must be informed of any charges to be incurred when moving;

10. Every resident shall have the right to retain and use personal clothing and possessions, unless medically contraindicated, and shall have the right to security in the storage and use of such clothing and possessions;

11. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and a statement of related charges, including

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any costs for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate;

12. Every resident shall be free from mental and physical abuse and neglect, as such terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of the physician who shall set forth in writing the circumstances requiring the use of restraint. Use of a chemical or physical restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;

13. Every resident shall receive a statement of the facility's regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents;

14. Every resident shall receive a statement that, should they be adjudicated incompetent and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed representative;

15. No resident shall be required to perform services for a facility;

16. Every resident shall have privacy for spousal visits. Every resident may share a room with the resident's spouse, if the spouse is residing in the same facility;

17. When a physician indicates it is appropriate, a facility shall immediately notify the resident's next of kin, or representative of the resident's death or when the resident's death appears to be imminent;

18. Every resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

19. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the State Department of Health with respect to the facility and any plan of correction in effect with respect to the facility.

C. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations. Appropriate care shall not include duplication of services by a nursing home, hospice, or any combination of care providers.

D. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

E. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00), nor more than Three Hundred Dollars (\$300.00), or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

F. In addition to the penalties provided in this section, an action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury from any person whose threats would cause a violation of this section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit. If damages are alleged and proved in the action, the



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plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed.

G. Any employee of a state agency that inspects any nursing facility or special facility shall report any flagrant violations of this act or any other statute to the administrative head of the state agency, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate, reporting the violation to the district attorney of the county in which the violation occurred.

H. Upon the death of a resident who has no sources of payment for funeral services, the facility shall immediately notify appropriate county officials who shall be responsible for funeral and burial procedures of the deceased in the same manner as with any indigent resident of the county.

Added by Laws 1980, c. 241, § 18, eff. Oct. 1, 1980. Amended by Laws 1981, c. 182, § 3; Laws 1982, c. 171, § 1; Laws 1991, c. 127, § 11, emerg. eff. April 29, 1991; Laws 1992, c. 173, § 1, emerg. eff. May 5, 1992; Laws 1996, c. 231, § 4, eff. July 1, 1996; Laws 2001, c. 393, § 3, emerg. eff. June 4, 2001; Laws 2002, c. 138, § 1, eff. Nov. 1, 2002; Laws 2003, c.390, § 8, eff. July 1, 2003.

§63-1-1918.2. Renumbered as § 367.3 of Title 59 by Laws 2004, c. 374, § 9, emerg. eff. June 3, 2004.

§63-1-1918A. Repealed by Laws 2005, c. 108, § 4, eff. July 1, 2005.

§63-1-1918B. Intent of Legislature regarding nursing home residents' pain – Nursing homes to assess residents' pain - Rules and regulations regarding pain management.

A. It is the intent of the Legislature that pain experienced by nursing home residents be assessed and treated promptly, effectively, and for as long as pain persists.

B. On and after July 1, 2005, every nursing facility licensed pursuant to the Nursing Home Care Act shall, as a condition of licensure, include pain as an item to be assessed at the same time as vital signs are taken. The nursing facility shall ensure that pain assessment is performed in a consistent manner that is appropriate to the patient. The pain assessment shall be noted in the patient's chart in a manner consistent with other vital signs.

C. The State Board of Health shall promulgate rules, pursuant to recommendations issued by the State Advisory Council on Pain Management, for assessing and documenting pain.

Added by Laws 2004, c. 388, § 2, emerg. eff. June 3, 2004.

310:675-9-1.1. Nursing and personal care services

(a) The facility shall ensure that resident rights are respected in the provision of care.

310:675-9-3. Religion [REVOKED]

[Source: Revoked at 9 Ok Reg 3163, eff 7-1-92 (emergency); Revoked at 10 Ok Reg 1639, eff 6-1-93]

310:675-13-5. Nursing service

(i) Inservice. The facility shall provide all direct care staff with two hours of inservice training specific to their job assignment per month. This training shall include, at least, the following:

(2) Resident rights and resident adjustment to institutional life annually.

**Oregon**

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411-070-0095 Personal Incidental Funds

(6) Resident Rights:

(a) The resident must be allowed to manage his or her own funds, or to delegate their management to another, unless the resident has been determined to be incompetent by a court of law. A resident who was not adjudicated incompetent may always decide how to spend his or her own funds. Facility staff delegated to manage PIFs must follow guidelines outlined in this rule and other state and federal laws and regulations that may apply in order to assure that decisions not made by the resident are made in his or her best interest;

(b) The resident, family or friends has the right to be free from solicitation from the facility to purchase items that are included in the facilities daily rate;

(c) The resident must not be charged PIFs for any item included in the facility's daily rate unless the facility can show at least one of the following:

(A) The resident made an informed decision to purchase the item, understanding that a similar and appropriate item is included in the daily rate;

(B) The family requested that the facility purchase the item, understanding that a similar and appropriate item is included in the daily rate; or

(C) The resident is not currently able to make an informed decision to purchase the item, but did so prior to current incapacity;

(d) The resident, family or friends must not be charged for any drug designated by the Food and Drug Administration as less-than-effective unless it can show that both the physician and the resident made an informed decision to continue use of the drug;

(e) Prior to purchasing an item that is included in the facility's daily rate or is over \$50, the facility must consult with the SPD/Type B AAA case manager;

(f) The facility must not charge resident PIFs for any item or service that benefits the facility, facility staff or relatives or friends of facility staff, unless it can show that the resident made an informed decision to purchase the item or service; and

(g) When the facility or SPD is of the opinion that a resident is incapable of managing personal funds and the resident has no representative, the facility must refer the resident to the case manager in the local SPD/Type B AAA, who will consult with the resident regarding resident preference. If the attending physician agrees, as documented on the Form SDS 544, Physician's Statement of Resident's Capacity to Manage Funds, that the

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resident is incapable of handling funds, the case manager will attempt to find a suitable delegate to manage the resident's funds. If no delegate can be found, the facility must assume the responsibility. If the resident disagrees with the designation of a delegate, the designation cannot be made, and the client retains the right to manage, delegate, and direct use of his own money, if not adjudicated incompetent.

### 411-085-0300 -Civil Rights

(1) The facility must not make any distinction, discrimination or restriction based on a resident's, potential resident's or visitor's sex, marital status, race, color, national origin or disability.

(2) The facility must make reasonable accommodations in order to provide services needed by applicants who are disabled.

Stat. Auth.: ORS 410 & 441

Stats. Implemented: ORS 441.055 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04

### 411-085-0310

#### Residents' Rights: Generally

The facility must protect, encourage and assist the resident in exercising the rights identified in OAR 411-085-0300 through 411-085-0350. Each resident and his/her legal representative, as appropriate, has the right to:

(1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.

(2) Be fully informed, orally and in writing in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, prior to or at the time of admission.

(3) Be fully informed, prior to or at the time of admission and during stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring that the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.

(4) Be fully informed of his/her total health status, including but not limited to medical status. The resident must be informed of the right to choose his/her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his/her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.

(5) Refuse any medication, treatment, care or any participation in experimental research unless the resident has been found legally incapable of doing so.

(6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

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- (8) Be transferred or discharged only in accordance with The Department's transfer/discharge rules.
- (9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects:
  - (a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days;
  - (b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment would have a significant adverse impact on the resident's medical or psychological status;
  - (c) Moving residents on the basis of source of payment is not just cause for intrafacility transfers;
  - (d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.
- (10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.
- (11) Be treated with consideration, respect and dignity and assured complete privacy during treatment and when receiving personal care.
- (12) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened and to have regular access to the private use of a telephone.
- (13) Be provided privacy for visits when requested, including meetings with other residents and family groups.
- (14) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, Seniors and People with Disabilities, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.
- (15) Promptly inspect all records pertaining to the resident.
- (16) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).
- (17) Participate in social, religious, and community activities at the discretion of the resident.
- (18) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.
- (19) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, neither the facility nor any person subject to the supervision, direction, or control of the facility may retaliate by:
  - (a) Increasing charges or decreasing services, rights or privileges;

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- (b) Threatening to increase charges or decrease services, rights or privileges;
  - (c) Taking or threatening any action to coerce or compel the resident to leave the facility;  
or
  - (d) Abusing, harassing, or threatening to abuse or harass a resident.
- (20) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.
- (21) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

Stat. Auth.: ORS 410 & 441

Stats. Implemented: ORS 441.055, 441.600, 441.610, 441.615 & 441.700

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04

411-085-0320

Residents' Rights: Charges and Rates

- (1) ADMISSION. The facility must provide written and oral notice before or at the time of admission to each resident specifying:
- (a) The base daily rate, or Medicaid rate and, as soon as known, amount of resident liability, as applicable; services provided for that rate, and other charges that might reasonably be expected, including but not limited to medical supplies, pharmaceuticals, incontinence care, feeding, bedhold daily rate, and laundry;
  - (b) Whether the facility accepts Medicaid reimbursement:
    - (A) If the facility accepts Medicaid reimbursement, the notice must include a description of the Medicaid eligibility requirements and who to contact to apply for Medicaid assistance;
    - (B) If the facility does not accept Medicaid, the notice must include the facility's policy regarding residents who exhaust their private resources and become eligible for Medicaid;
    - (C) Nothing in this section will be construed to permit discrimination based on payment source; and
  - (c) Alternative forms of transportation available to the resident for routine and emergency transportation, including information on possible cost and how to access such service(s).
- (2) RATE CHANGES. The facility must give 30 days' written notice to all residents of changes in base rates and any other charge.

Stat. Auth.: ORS 410 & 441.055

Stats. Implemented: ORS 441.055, 441.605 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04

411-085-0330

Residents' Rights: Visitor Access

- (1) DEFINITION. As used in this rule, "full and free access" means access to the fullest extent possible without undue adverse interference on the operation of the facility.
- (2) FULL ACCESS. The facility must permit individuals and groups full and free access to:
- (a) Visit, talk with and make personal, social and legal services available to all residents;

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(b) Inform residents of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents;

(c) Assist, advise and represent residents in obtaining public assistance, medical assistance, social security benefits and in asserting resident rights. Assistance may be provided to residents individually or in groups.

(3) RIGHT TO REFUSE. The resident has the right to refuse contact with any individual or group who otherwise has access to the facility under this rule. The refusal to communicate with any individual or group must be made directly by the resident unless the resident's medical record clearly documents the reasons for not doing so.

(4) SOLICITATION. This rule is not intended to allow access to persons or organizations whose primary purpose is to solicit purchase of services or products, or solicit contributions, from the residents or staff.

Stat. Auth.: ORS 410 & 441

Stats. Implemented: ORS 441.055, 441.605 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04

411-085-0340

Residents' Rights: Pharmaceutical Services, Charges for Drugs

(1) CHOICE OF SUPPLIERS:

(a) The resident must have a choice from among prescription/nonprescription drug delivery systems so long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy.

(b) The resident must have a choice from among suppliers of nonprescription medication, but no facility is required to accept any opened container of such medication;

(c) If the established system of the facility, whether provided by facility pharmacy or a pharmacy under contract, provides resident profile information (diagnosis, medications and allergies), the pharmacy chosen by the resident under subsection (1)(a) of this rule must also provide that information for any resident it serves at the facility;

(d) The resident must have a choice from among suppliers of nonprescriptive sickroom supplies so long as any items supplied can be maintained in a clean manner with equipment available at the facility;

(e) For purposes of subsections (1)(b) and (c) of this rule, "supplier" includes an authorized representative of the resident who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.

(2) CHARGES FOR DRUGS:

(a) If a facility charges residents for drugs, the following must be made available to the resident on request:

(A) Name of the drug;

(B) Amount paid by the facility for the drug;

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(C) Amount charged by the facility for the drug; and

(D) Amount of repackaging costs, if any.

(b) If a pharmacy charges any resident's insurance company or other party for a drug administered to a resident in a nursing facility, the pharmacy must provide on request a written bill listing the:

(A) Name of the drug; and

(B) Amount charged by the pharmacy for the drug.

Stat. Auth.: ORS 410 & ORS 441

Stats. Implemented: ORS 441.055, 441.083, 441.084 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04

411-085-0350

Residents' Rights: Personal Funds

(1) RESIDENT HELD FUNDS. The resident has the right to manage his/her financial affairs and the facility may not require residents to deposit personal funds with the facility.

(2) FACILITY HELD FUNDS.

(a) Resident Request. The facility must hold, safeguard, manage and account for the personal funds of the resident when requested in writing. The resident must be fully informed of the facility's system for protecting personal funds. When the resident requests that the facility hold such funds, the facility must ensure that such request is in writing;

(b) Accounting System. 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. The system may allow resident funds to be pooled together, however it must preclude any commingling of resident funds with facility funds;

(c) Report to Resident. The facility must provide a copy of the individual financial record to the resident no less often than quarterly and upon request of the resident. The statement must include the following information:

(A) Identification number and location of the account in which the resident's personal funds have been deposited.

(B) The resident's account balance at the beginning of the statement period.

(C) A listing of each deposit, and each withdrawal, to and from the resident's account.

Each withdrawal must include an explanation of the reason for the withdrawal (Example: If money is requested by the resident, facility may document "resident request").

(D) The interest earned, if any, and the current interest rate.

(E) The ending balance.

(d) Resident Control of Funds. The facility must take all reasonable precautions to ensure the resident's funds are handled according to the resident's wishes. If resident's wishes cannot be determined, funds must be handled in accordance with the best interest of the resident;

(e) Resident Access to Funds. The facility must allow residents access to funds on weekdays (Monday through Friday, excluding holidays) during business office hours (no less than six hours per day) and at least two hours per day on all other days;

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(f) Funds Under \$50. The facility may hold up to \$50 for each resident in a non-interest-bearing, petty cash fund. All resident funds held by the facility that are not in the petty cash fund must be deposited in an interest-bearing account as described in subsection (g) of this rule,

(g) Funds \$50 and over.

(A) Whenever money held by the facility for a resident exceeds \$50, the excess above \$50 must, within 7 days of receipt, be deposited in the resident's interest-bearing account, unless the money is managed in a Trust and Agency Account held by The Department.

(B) If the interest-bearing account for residents is pooled, the facility must have a system that accurately and promptly allocates earned interest to the appropriate resident.

(h) SSI Resource Limit Exceeded. The facility must notify any resident receiving Medicaid benefits whenever his/her account reaches within \$200 of the SSI resource limit for one person; and that, if the amount in the account and the value of the resident's non-exempt resources reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI;

(i) Death of Resident. Upon the death of a Medicaid or General Assistance resident with no known surviving spouse, any personal incidental funds held by the facility for the resident must be forwarded to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, OR 97309, within ten (10) business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed;

(j) Surety Bond. The licensee must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility. The amount of the bond must be sufficient to cover the highest amount of the account with resident funds, plus the petty cash funds, during the previous 12 months.

(3) CHANGE OF OWNERSHIP OR LICENSEE. At the time of a change of ownership or licensee, the new owner or licensee must ensure:

(a) Written Accounting of Funds. Each resident or delegate receives a written accounting of his/her funds held by the facility at the time of the change. A copy of the written accounting for each resident must be provided to the local SPD or Type B AAA.

(b) Resident Wishes Respected. That the wishes of each resident regarding management of facility held funds is determined and documented (see OAR 411-070-0095 for Medicaid clients), and that funds held by the prior owner or licensee are transferred to the new owner or licensee or to another party, designated by the resident.

Stat. Auth.: ORS 410 & 441

Stats. Implemented: ORS 441.055 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SDSD 9-2001, f. 11-30-01, cert. ef. 12-1-01; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04



**Pennsylvania**

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§ 201.29. Resident rights.

(a) The governing body of the facility shall establish written policies regarding the rights and responsibilities of residents and, through the administrator, shall be responsible for development of and adherence to procedures implementing the policies.

(b) Policies and procedures regarding rights and responsibilities of residents shall be available to residents and members of the public.

(c) Policies of the facility shall be available to staff, residents, consumer groups and the interested public, including a written outline of the facility's objectives and a statement of the rights of its residents. The policies shall set forth the rights of the resident and prohibit mistreatment and abuse of the resident.

(d) The staff of the facility shall be trained and involved in the implementation of the policies and procedures.

(e) The resident or if the resident is not competent, the resident's responsible person, shall be informed verbally and in writing prior to, or at the time of admission, of services available in the facility and of charges covered and not covered by the per diem rate of the facility. If changes in the charges occur during the resident's stay, the resident shall be advised verbally and in writing reasonably in advance of the change. "Reasonably in advance" shall be interpreted to be 30 days unless circumstances dictate otherwise. If a facility requires a security deposit, the written procedure or contract that is given to the resident or resident's responsible person shall indicate how the deposit will be used and the terms for the return of the money. A security deposit is not permitted for a resident receiving Medical Assistance (MA).

(f) The resident shall be transferred or discharged only for medical reasons, for his welfare or that of other residents or for nonpayment of stay if the facility has demonstrated reasonable effort to collect the debt. Except in an emergency, a resident may not be transferred or discharged from the facility without prior notification. The resident and the resident's responsible person shall receive written notification in reasonable advance of the impending transfer or discharge. Reasonable advance notice shall be interpreted to mean 30 days unless appropriate plans which are acceptable to the resident can be implemented sooner. The facility shall inform the resident of its bed-hold policy, if applicable, prior to discharge. The actions shall be documented on the resident record. Suitable clinical records describing the resident's needs, including list of orders and medications as directed by the attending physician shall accompany the resident if the resident is sent to another medical facility.

(g) Unless the discharge is initiated by the resident or resident's responsible person, the facility is responsible to assure that appropriate arrangements are made for a safe and orderly transfer and that the resident is transferred to an appropriate place that is capable of meeting the resident's needs. Prior to transfer, the facility shall inform the resident or the resident's responsible person as to whether the facility where the resident is being transferred is certified to participate in the Medicare and MA reimbursement programs.

(h) It is not necessary to transfer a resident whose condition had changed within or between health care facilities when, in the opinion of the attending physician, the transfer

may be harmful to the physical or mental health of the resident. The physician shall document the situation accordingly on the resident's record.

(i) The resident shall be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to the facility staff or to outside representatives of the resident's choice. The resident or resident's responsible person shall be made aware of the Department's Hot Line (800) 254-5164, the telephone number of the Long-Term Care Ombudsman Program located within the Local Area Agency on Aging, and the telephone number of the local Legal Services Program to which the resident may address grievances. A facility is required to post this information in a prominent location and in a large print easy to read format.

(j) The resident shall be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care for the necessary personal and social needs.

(k) The resident shall be permitted to retain and use personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents and unless medically contraindicated, as documented by his physician in the medical record. Reasonable provisions shall be made for the proper handling of personal clothing and possessions that are retained in the facility. The resident shall have access and use of these belongings.

(l) The resident's rights devolve to the resident's responsible person as follows:

(1) When the resident is adjudicated incapacitated by a court.

(2) As Pennsylvania law otherwise authorizes.

(m) The resident rights in this section shall be reflected in the policies and procedures of the facility.

(n) The facility shall post in a conspicuous place near the entrances and on each floor of the facility a notice which sets forth the list of resident's rights. The facility shall on admission provide a resident or resident's responsible person with a personal copy of the notice. In the case of a resident who cannot read, write or understand English, arrangements shall be made to ensure that this policy is fully communicated to the resident. A certificate of the provision of personal notice as required in this section shall be entered in the resident's clinical record.

(o) Experimental research or treatment in a nursing home may not be carried out without the approval of the Department and without the written approval of the resident after full disclosure. For the purposes of this subsection, "experimental research" means an experimental treatment or procedure that is one of the following:

(1) Not a generally accepted practice in the medical community.

(2) Exposes the resident to pain, injury, invasion of privacy or asks the resident to surrender autonomy, such as a drug study.

Authority: The provisions of this § 201.29 amended under section 803 of the Health Care Facilities Act (35 P. S. § 448.803); and section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source: The provisions of this § 201.29 adopted August 29, 1975, effective September 1, 1975, 5 Pa.B. 2233; amended July 6, 1979, effective July 7, 1979, 9 Pa.B. 2252; amended April 23, 1982, 12 Pa.B. 1316; amended January 31, 1987, effective July 1, 1987, 17 Pa.B. 514; corrected June 19, 1987, 17 Pa.B. 2462; amended July 23, 1999, effective July

24, 1999, 29 Pa.B. 3999. Immediately preceding text appears at serial pages (202333) to (202336).

## **Rhode Island**

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### **Section 19.0 *Rights of Residents***

19.1 As part of the procedure for admission of a resident to a nursing facility a written contract shall be entered into between the said resident or his next of kin or legal representative and the nursing facility and the following rules shall be observed in accordance with reference 24.

19.2 Each resident shall be offered treatment without discrimination as to gender, age, race, color, religion, national origin, handicap, or source of payment.

19.3 Each resident shall be treated and cared for with consideration, respect and dignity and shall be afforded his right to privacy to the extent consistent with providing adequate medical care and with efficient administration.

19.4 Each resident shall have the right to choose his or her own physician subject to the physician's concurrence.

19.5 Each resident or responsible party shall be fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission or during stay, of all rules and regulations and policies pertaining to rights of residents and governing resident conduct and responsibilities.

19.6 Each resident or responsible party shall be informed in writing, prior to, or at the time of admission and during stay, of services available and of related charges including all charges not covered either under federal and/or state programs by other third party payers or by the facility's basic per diem rate.

19.7 Each resident admitted to a facility shall be and remain under the care of a physician as specified in policies adopted by the governing body.

a) Each resident shall be informed by a physician of his medical condition unless medically contraindicated, (as documented by a physician in his medical record), and shall participate in the planning and selection of his medical treatment and care.

19.8 If it is proposed that a resident be used in any human experimentation project, the resident shall first be thoroughly informed in writing of such proposal and shall be offered the right to refuse to participate in such project. A resident who, after being thoroughly informed, wishes to participate must execute a written statement of informed consent. The informed consent documentation shall be maintained on file in the facility.

19.9 Residents shall be encouraged and assisted to voice their grievances through a documented grievance mechanism established by the facility, involving residents, staff and relatives of residents, which will insure resident's freedom from restraints, interference, coercion, discrimination or reprisal.

19.9.1 There shall be prompt efforts by the facility staff to resolve resident's grievances.

19.10 Residents shall not be subject to mental and physical abuse and shall be free from chemical and (except in emergencies) physical restraints.

a) Restraining devices are generally prohibited. A controlling device to be used for the protection of the resident may be utilized only as prescribed in writing and signed by a physician. The length of time, the purpose and the kind of restraint shall be specified in

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the physician's order.

b) If after a trial of less restrictive measures, the facility decides that a physical restraint would enable and promote greater functional independence, then the use of the restraining device must first be explained to the resident, family member, or legal representative, and if the resident, family member or legal representative agrees to this treatment alternative, then the restraining device may be used for the specific periods for which the restraint has been determined to serve the purpose defined above. This does not allow the use of restraints for convenience sake.

c) The restraining device must be authorized by the physician for use for specific periods for which the restraint has been determined to serve the purpose defined in paragraph b) above. This does not allow the use of restraints for convenience sake.

19.11 A resident shall not be required to perform services for the facility that are not included for therapeutic purposes in his plan of care.

19.12 Residents may meet with and participate in activities of social, religious and community groups at their discretion unless medically contraindicated per written medical order.

19.13 Residents may associate and communicate privately with persons of their choice and shall be allowed freedom and privacy in sending and receiving mail.

a) Posted reasonable visiting hours must be maintained in each home, with a minimum of four hours daily. The facility must provide immediate access to residents by properly identified appropriate government personnel, family members, physicians, and relatives. However, the resident reserves the right to refuse visitation by any of the aforementioned.

b) i. All health care providers, as licensed under the provisions of Chapter 29 or 37 of Title 5 and all health care facilities, as defined in section 23-17-2(5) of the Rhode Island General Laws, as amended, shall be required to note in their residents' permanent medical records, the name of individual(s) not legally related by blood or marriage to the resident, who the resident wishes to be considered as immediate family member(s), for the purpose of granting extended visitation rights to said individual(s), so said individual(s) may visit the resident while he or she is receiving inpatient health care services in a health care facility.

ii. A resident choosing to designate said individual(s) as immediate family members for the purpose of extending visitation rights may choose up to five (5) individuals and do so either verbally or in writing. This designation shall be made only by the resident and can be initiated and/or rescinded by the resident at any time, either prior to, during, or subsequent to an inpatient stay at the health care facility.

iii. The full names of individual(s) so designated, along with their relationship to the resident, shall be recorded in the resident's permanent medical records, both at the inpatient health care facility and with the resident's primary care physician.

iv. In the event the resident has not had the opportunity to have said designation recorded in his or her medical records, a signed statement in the resident's own handwriting attesting to the designation of said individual(s) as an immediate family member for the purpose of extending visitation right during the provision of health care services in an inpatient health care facility, along with their relationship to said individual(s) shall meet all the requirements of this section. The resident's signature on said signed statement shall be witnessed by two individuals, neither of whom can be the designated individual(s). In the event such signed statement is not available, those designated as

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agents on a durable power of attorney for health care form shall be allowed visitation privileges.

v. This section shall not be construed to prohibit legally recognized members of the resident's family from visiting the resident if they have not been so designated through the provisions of this section. No resident shall be required to designate individual(s) under the provisions of this section.

19.14 Residents shall have the right to obtain personal services or to purchase needs outside of the facility.

19.15 The resident's right to privacy and confidentiality shall extend to all records pertaining to the resident. Release of any records shall be subject to the resident's approval except as otherwise provided by law.

a) The right to privacy and confidentiality relates to the public dissemination of specific information contained within resident records and to the identification of specific individuals, but does not abrogate the responsibility of the licensing agency to review all resident records.

19.16 A resident shall have the right to manage his or her own personal financial affairs. The resident may delegate the management of his or her financial affairs to the facility by means of a formal written request. The written request should specify the period of time for which transfer of financial responsibility is desired. If the facility agrees to accept such responsibility, it shall convey acknowledgment of acceptance to the residents in writing. The facility shall have the obligation to conduct the resident's affairs in conformity with state laws and to provide a written accounting statement at least quarterly or at any time upon demand of the resident.

19.17 Residents shall be assured privacy for visits by the spouse or other partner. If both are residents in the facility, they may share a room unless medically contraindicated per written order of the physician and subject to the availability of such accommodations within the facility.

19.18 Before transferring a resident to another facility or level of care within a facility, the resident shall be informed of the need for such a transfer and of any alternatives to such a transfer.

a) A resident shall be transferred or discharged only for medical reasons, or for his welfare or that of other residents or for nonpayment of his stay.

b) Reasonable advance notice for transfers to health care facilities other than hospitals shall be given to ensure orderly transfer or discharge and such actions shall be documented in the medical record.

**South Carolina**

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**BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES**

**SECTION 44-81-10. Short title.**

This act may be cited as the "Bill of Rights for Residents of Long-Term Care Facilities".

**SECTION 44-81-20. Legislative findings.**

The General Assembly finds that persons residing within long-term care facilities are isolated from the community and often lack the means to assert their rights fully as individual citizens. The General Assembly recognizes the need for these persons to live

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within the least restrictive environment possible in order to retain their individuality and personal freedom. The General Assembly further finds that it is necessary to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's need for self-determination.

### SECTION 44-81-30. Definitions.

As used in this chapter:

- (1) "Long-term care facility" means an intermediate care facility, nursing care facility, or residential care facility subject to regulation and licensure by the State Department of Health and Environmental Control (department).
- (2) "Resident" means a person who is receiving treatment or care in a long-term care facility.
- (3) "Representative" means a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian.

### SECTION 44-81-40. Rights of residents; written and oral explanation required.

(A) Each resident or the resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions of this chapter before or at the time of admission to a long-term care facility. Written acknowledgment of the receipt of the explanation by the resident or the resident's representative must be made a part of the resident's file. Each facility must have posted written notices of the residents' rights in conspicuous locations in the facility. The written notices must be approved by the department. The notices must be in a type and a format which is easily readable by residents and must describe residents' rights, grievance procedures, and the enforcement provisions provided by this chapter.

(B) Each resident and the resident's representative must be informed in writing, before or at the time of admission, of:

- (1) available services and of related charges, including all charges not covered under federal or state programs, by other third party payers, or by the facility's basic per diem rate;
- (2) the facility's refund policy which must be adopted by each facility and which must be based upon the actual number of days a resident was in the facility and any reasonable number of bed-hold days.

Each resident and the resident's representative must be informed in writing of any subsequent change in services, charges, or refund policy.

(C) Each resident or the resident's legal guardian has the right to:

- (1) choose a personal attending physician;
- (2) participate in planning care and treatment or changes in care and treatment;
- (3) be fully informed in advance about changes in care and treatment that may affect the resident's well-being;
- (4) receive from the resident's physician a complete and current description of the resident's diagnosis and prognosis in terms that the resident is able to understand;
- (5) Refuse to participate in experimental research.

(D) A resident may be transferred or discharged only for medical reasons, for the welfare of the resident or for the welfare of other residents of the facility, or for nonpayment and must be given written notice of not less than thirty days, except that when the health, safety, or welfare of other residents of the facility would be endangered by the thirty-day

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notice requirement, the time for giving notice must be that which is practicable under the circumstances. Each resident must be given written notice before the resident's room or roommate in the facility is changed.

(E) Each resident or the resident's representative may manage the resident's personal finances unless the facility has been delegated in writing to carry out this responsibility, in which case the resident must be given a quarterly report of the resident's account.

(F) Each resident must be free from mental and physical abuse and free from chemical and physical restraints except those restraints ordered by a physician.

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

(H) Each resident must be treated with respect and dignity and assured privacy during treatment and when receiving personal care.

(I) Each resident must be assured that no resident will be required to perform services for the facility that are not for therapeutic purposes as identified in the plan of care for the resident.

(J) The legal guardian, family members, and other relatives of each resident must be allowed immediate access to that resident, subject to the resident's right to deny access or withdraw consent to access at any time. Each resident without unreasonable delay or restrictions must be allowed to associate and communicate privately with persons of the resident's choice and must be assured freedom and privacy in sending and receiving mail. The legal guardian, family members, and other relatives of each resident must be allowed to meet in the facility with the legal guardian, family members, and other relatives of other residents to discuss matters related to the facility, so long as the meeting does not disrupt resident care or safety.

(K) Each resident may meet with and participate in activities of social, religious, and community groups at the resident's discretion unless medically contraindicated by written medical order.

(L) Each resident must be able to keep and use personal clothing and possessions as space permits unless it infringes on another resident's rights.

(M) Each resident must be assured privacy for visits of a conjugal nature.

(N) Married residents must be permitted to share a room unless medically contraindicated by the attending physician in the medical record.

(O) A resident or a resident's legal representative may contract with a person not associated with or employed by the facility to perform sitter services unless the services are prohibited from being performed by a private contractor by state or federal law or by the written contract between the facility and the resident. The person, being a private contractor, is required to abide by and follow the policies and procedures of the facility as they pertain to sitters and volunteers. The person must be selected from an approved list or agency and approved by the facility. All residents or residents' legal representatives employing a private contractor must agree in writing to hold the facility harmless from any liability.

### SECTION 44-81-50. Discrimination.

Each resident must be offered treatment without discrimination as to sex, race, color, religion, national origin, or source of payment.

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SECTION 44-81-60. Grievance procedures; review by department.

Each facility shall establish grievance procedures to be exercised by or on behalf of the resident to enforce the rights provided by this act. The department shall review and approve these grievance procedures annually. This act is enforced by the department.

The department may promulgate regulations to carry out the provisions of this act.

SECTION 44-81-70. Retaliation.

No facility by or through its owner, administrator, or operator, or any person subject to the supervision, direction, or control of the owner, administrator, or operator shall retaliate against a resident after the resident or the resident's legal representative has engaged in exercising rights under this act by increasing charges, decreasing services, rights, or privileges, or by taking any action to coerce or compel the resident to leave the facility or by abusing or embarrassing or threatening any resident in any manner.

**South Dakota**

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South Dakota Resident Rights

44:04:17:01. Application of chapter -- Residents' rights policies. Nursing facilities and assisted living centers must comply with this chapter. A nursing facility or assisted living center must establish policies consistent with this chapter to protect and promote the rights of each resident.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:02. Facility to inform resident of rights. Prior to or at the time of admission, a facility must inform the resident, both orally and in writing, of the resident's rights and of the rules governing the resident's conduct and responsibilities while living in the facility. The resident must acknowledge in writing that the resident received the information.

During the resident's stay the facility must notify the resident, both orally and in writing, of any changes to the original information. The information must contain the following:

- (1) The resident's right to exercise the resident's rights as a resident of the facility and as a citizen of the United States;
- (2) The resident's right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising the resident's rights;
- (3) The resident's right to have a person appointed to act on the resident's behalf. If a resident has been adjudged incompetent or incapacitated, the resident's rights shall be exercised by the person appointed under state law to act on the resident's behalf. If a resident has not been adjudged to be incompetent or incapacitated, the resident's rights may be exercised by the legal surrogate recognized under state law, whether statutory or as recognized by the courts of the state to act on the resident's behalf. The facility must record and keep up to date the appointed person's address and phone number;
- (4) The resident's right to access records pertaining to the resident. The resident may purchase photocopies of the resident's records or any portions of them. The cost to the resident may not exceed community standards for photocopying, and the facility must provide the photocopies within two working days after the request;



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(5) The resident's right to be fully informed of the resident's total health status, including functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health, psychosocial status, and sensory and physical impairments;

(6) The resident's right to refuse treatment and to refuse to participate in experimental research. A resident's right to refuse treatment does not absolve a facility from responsibility to provide for necessary medical services and treatment. Residents who refuse treatment must be informed of the results of that refusal, plus any alternatives that may be available;

(7) The resident's right to formulate a durable power of attorney for health care as provided in SDCL chapter [59-7](#) and a living will declaration as provided in SDCL chapter 34-12D; and

(8) The resident's right to receive visitors. Visiting hours and policies of the facility must permit and encourage the visiting of residents by friends and relatives.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 19 SDR 95, effective January 7, 1993; subdivision (8) transferred from § 44:04:12:03, 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL [34-12-13](#).

44:04:17:03. Facility to provide information on available services. A facility must provide the following information in writing to each resident:

(1) A list of services available in the facility and the charges for such services. The facility must specify which items and services are included in the services for which the resident may not be charged, those other items and services that the facility offers and for which the resident may be charged, and the amount of any such charges;

(2) A description of how a resident can protect personal funds;

(3) A list of names, addresses, and telephone numbers of client advocates;

(4) A description of how to file a complaint with the department concerning abuse, neglect, and misappropriation of resident property;

(5) A description of how the resident can contact the resident's physician, including the name and specialty of the physician;

(6) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the South Dakota Department of Social Services and of the United States Social Security Administration;

(7) A description of the bed-hold policy which indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and

(8) A description explaining the responsibilities of the resident and family members regarding self-administered medication.

A signed and dated admission agreement between the resident or the resident's legal representative and the facility must include subdivisions (1) to (8), inclusive, of this section. The resident or resident's legal representative and the facility shall complete the admission agreement before or at the time of admission and before the resident has made a commitment for payment for proposed or actual care. The agreement may not include ambiguous or misleading information and may not be in conflict with this chapter. The

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agreement must be printed for ease of reading by the resident. If the agreement exceeds three pages, it must contain a table of contents or an index of principal sections. Any change in the information must be given to the resident or the resident's legal representative as a signed and dated addendum to the original agreement.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 28 SDR 83, effective December 16, 2001.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:04. Notification when resident's condition changes. A facility must immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or interested family member when any of the following occurs:

- (1) An accident involving the resident which results in injury or has the potential for requiring intervention by a physician;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the facility.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:05. Notification of resident's room assignment or rights change. A facility must promptly notify the resident and, if known, the resident's legal representative, as specified in SDCL [34-12C-3](#), or interested family member when there has been a change in the resident's room or roommate assignment or when there has been a change in the resident's rights.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:06. Right to manage financial affairs. A resident may manage personal financial affairs. A facility may not require residents to deposit their personal funds with the facility. If the resident chooses to deposit funds with the facility and gives written authorization, the facility must hold the funds in accordance with SDCL [34-12-15.1](#) to [34-12-15.10](#), inclusive. This section does not apply to assisted living centers which do not manage residents' personal funds.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:07. Choice in planning care. A resident may choose a personal attending physician, be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being, and, unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care or treatment.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

State Regulations pertaining to category\_resident\_rights SD

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

Cross-References:

Right to choose own physician unimpaired by public health programs -- Misdemeanor, SDCL [34-1-20](#).

Rights of authorized person as incapacitated person, SDCL [34-12C-6](#).

Liability of health care provider -- Liability of authorized decision maker, SDCL [34-12C-7](#).

44:04:17:08. Privacy and confidentiality. A facility must provide for privacy and confidentiality for the resident, including the resident's accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. A facility is not required to provide a private room for each resident. A facility must permit residents to perform the following:

- (1) To send and receive unopened mail and to have access to stationery, postage, and writing implements at the resident's own expense;
- (2) To access and use a telephone without being overheard;
- (3) To visit a spouse or, if both are residents of the same facility, to share a room with the spouse, within the capacity of the facility, upon the consent of both spouses;
- (4) Except in an emergency, to have room doors closed and to require knocking before entering the resident's room;
- (5) To have only authorized staff present during treatment or activities of personal hygiene;
- (6) To retire and rise according to the resident's wishes, as long as the resident does not disturb other residents;
- (7) To meet, associate, and communicate with any person of the resident's choice in a private place within the facility;
- (8) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and
- (9) To approve or refuse the release of personal and medical records to any individual outside the facility, except when the resident is transferred to another health care facility or when the release of the record is required by law. With the resident's permission, a facility must allow the state ombudsman or a representative of the ombudsman access to the resident's medical records.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

Cross-Reference: Written policies and confidentiality of records, § 44:04:09:04.

44:04:17:09. Quality of life. A facility must provide care and an environment that contributes to the resident's quality of life, including:

- (1) A safe, clean, comfortable, and homelike environment;
- (2) Maintenance or enhancement of the resident's ability to preserve individuality, exercise self-determination, and control everyday physical needs;
- (3) Freedom from physical or chemical restraints imposed for purposes of discipline or convenience;

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(4) Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property;  
(5) Retention and use of personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents; and

(6) Support and coordination to assure pain is recognized and addressed appropriately.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 28 SDR 83, effective December 16, 2001.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

Cross-Reference: Care policies for nursing facilities, § 44:04:04:11.

44:04:17:10. Grievances. A resident may voice grievances without discrimination or reprisal. A resident's grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other residents, and infringement of the resident's rights. A facility must adopt a grievance process and make the process known to each resident and to the resident's immediate family. The grievance process must include the facility's efforts to resolve the grievance and documentation of:

- (1) The grievance;
- (2) The names of the persons involved;
- (3) The disposition of the matter; and
- (4) The date of disposition.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:11. Availability of survey results. A resident may examine the results of the department's most recent survey of the facility and any plan of correction in effect. A facility must make available, in a place readily accessible to residents, results of the department's most recent survey, and if applicable, the survey conducted by the United States Department of Health and Human Services and any plans of correction in effect.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

44:04:17:12. Right to refuse to perform services. A resident may refuse to perform services on behalf of the facility, unless otherwise agreed to in the resident's plan of care. The resident may perform services for the facility when the following conditions are met:

- (1) The plan of care includes documentation of the need or desire for work;
- (2) The nature of the services performed is specified, including whether the services are voluntary or paid;
- (3) Compensation for paid services is at or above prevailing rates; and
- (4) The resident agrees to the work arrangement.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

State Regulations pertaining to category\_resident\_rights SD through TN

44:04:17:13. Self-administration of drugs. A resident may self-administer drugs if the physician, registered nurse, pharmacist, and social worker or designee have determined the practice to be safe. The determination must state whether the resident or the nursing staff is responsible for storage of the drug and documentation of its administration in accordance with chapter 44:04:08. In an assisted living center a resident may self-administer drugs if the registered nurse (if applicable), physician, and pharmacist have determined the practice to be safe.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

Cross-References: Medication control, ch 44:04:08; Restricted admissions to assisted living centers, § 44:04:04:12(6).

44:04:17:14. Admission, transfer, and discharge policies. A facility must establish and maintain policies and practices for admission, discharge, and transfer of residents which prohibit discrimination based upon payment source and which are made known to residents at or before the time of admission. The policies and practices must include:

(1) The resident may remain in the facility and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the facility, the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, the safety or health of individuals in the facility is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the facility ceases to operate;

(2) The facility must notify the resident and a family member or client advocate in writing at least 30 days before the transfer or discharge unless a change in the resident's health requires immediate transfer or discharge or the resident has not resided in the facility for 30 days. The written notice must specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;

(3) Conditions under which the resident may request or refuse transfer within the facility; and

(4) A description of how the resident may appeal a decision by the facility to transfer or discharge the resident.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 10, 1995.

General Authority: SDCL [34-12-13](#).

Law Implemented: SDCL [34-12-13](#).

**Tennessee**

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1200-8-6-.12 RESIDENT RIGHTS.

(1) The nursing home shall establish and implement written policies and procedures setting forth the rights of residents for the protection and preservation of dignity, individuality and, to the extent medically feasible, independence. Residents and their families or other representatives shall be fully informed and documentation shall be maintained in the resident's file of the following rights:

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- (a) To privacy in treatment and personal care;
- (b) To privacy, if married, for visits by his/her spouse;
- (c) To share a room with his/her spouse (if both are residents);
- (d) To be different, in order to promote social, religious and psychological well being;
- (e) To privately talk and/or meet with and see anyone;
- (f) To send and receive mail promptly and unopened;
- (g) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) working days. The Tennessee Department of Human Services, Adult Protective Services shall be notified immediately as required in T.C.A. §71-6-103;
- (h) To be free from chemical and physical restraints;
- (i) To meet with members of and take part in activities of social, commercial, religious and community groups. The administrator may refuse access to the facility to any person if that person's presence would be injurious to the health and safety of a resident or staff, or would threaten the security of the property of the resident, staff or facility;
- (j) To form and attend resident council meetings. The facility shall provide space for meetings and reasonable assistance to the council when requested;
- (k) To retain and use personal clothing and possessions as space permits;
- (l) To be free from being required by the facility to work or perform services;
- (m) To be fully informed by a physician of his/her health and medical condition. The facility shall give the resident and family the opportunity to participate in planning the resident's care and medical treatment;
- (n) To refuse treatment. The resident must be informed of the consequences of that decision. The refusal and its reason must be reported to the physician and documented in the medical record;
- (o) To refuse experimental treatment and drugs. The resident's written consent for participation in research must be obtained and retained in the medical record;
- (p) To have records kept confidential and private. Written consent by the resident must be obtained prior to release of information except to persons authorized by law. If the resident is mentally incompetent, written consent is required from the resident's legal representative. The nursing home must have policies to govern access and duplication of the resident's record;
- (q) To manage personal financial affairs. Any request by the resident for assistance must be in writing. A request for any additional person to have access to a resident's funds must also be in writing;
  
- (r) To be told in writing before or at the time of admission about the services available in the facility and about any extra charges, charges for services not covered under Medicare or Medicaid, or not included in the facility's bill;
- (s) To be free from discrimination because of the exercise of the right to speak and voice complaints;
- (t) To exercise his/her own independent judgment by executing any documents, including admission forms;
- (u) To have a free choice of providers of medical services, such as physician and pharmacy. However, medications must be supplied in packaging consistent with the medication system of the nursing home;

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- (v) To be free from involuntary transfer or discharge, except for these reasons:
1. Medical reasons;
  2. His/her welfare or that of the other residents; or
  3. Nonpayment, except as prohibited by the Medicaid program;
- (w) To voice grievances and complaints, and to recommend changes in policies and services to the facility staff or outside representatives of the resident's choice. The facility shall establish a grievance procedure and fully inform all residents and family members or other representatives of the procedure;
- (x) To have appropriate assessment and management of pain; and
- (y) To be involved in the decision making of all aspects of their care.
- (2) The rights set forth in this section may be abridged, restricted, limited or amended only as follows:
- (a) When medically contraindicated;
  - (b) When necessary to protect and preserve the rights of other residents in the facility; or
  - (c) When contradicted by the explicit provisions of another rule of the board.
- (3) Any reduction in residents' rights based upon medical consideration or the rights of other residents must be explicit, reasonable, appropriate to the justification, and the least restrictive response feasible. They may be time-limited, shall be explained to the resident, and must be documented in the individual resident's record by reciting the limitation's reason and scope. Medical contraindications shall be supported by a physician's order. At least once each month, the administrator and the director of nursing shall review the restriction's justification and scope before removing it, amending it, or renewing it. The names of any residents in the facility whose rights have been restricted under the provisions of this rule shall be maintained on a separate list which shall be available for inspection by the department and by the area long-term care ombudsman.
- Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-901, and 68-11-902. Administrative History: Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed May 24, 1985; effective June 23, 1985. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed May 10, 1990; effective June 24, 1990. Amendment filed March 9, 1992; effective April 23, 1992. Amendment filed March 10, 1995; effective May 24, 1995. Amendment filed June 13, 1997; effective August 27, 1997. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed June 18, 2002; effective September 1, 2002..

**Texas**

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[TITLE 40](#) SOCIAL SERVICES AND ASSISTANCE  
[PART 1](#) DEPARTMENT OF AGING AND DISABILITY SERVICES  
[CHAPTER 19](#) NURSING FACILITY REQUIREMENTS FOR LICENSURE AND  
MEDICAID CERTIFICATION  
[SUBCHAPTER E](#) RESIDENT RIGHTS  
RULE §19.401 Introduction

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(a) 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.

(b) The Texas Department of Human Services (DHS) has developed the following statement of the rights of a resident.

Figure: 40 TAC §19.401(b)

Statement of Resident Rights

You, the resident, do not give up any rights when you enter a nursing facility. The facility must encourage and assist you to fully exercise your rights. Any violation of these rights is against the law. It is against the law for any nursing facility employee to threaten, coerce, intimidate or retaliate against you for exercising your rights.

If anyone hurts you, threatens to hurt you, neglects your care, takes your property, or violates your dignity, you have the right to file a complaint with the facility administrator or with the Texas Department of Human Services by calling 1-800-458-9858.

You have a right to:

- (1) all care necessary for you to have the highest possible level of health;
- (2) safe, decent and clean conditions;
- (3) be free from abuse and exploitation;
- (4) be treated with courtesy, consideration, and respect;
- (5) be free from discrimination based on age, race, religion, sex, nationality, or disability and to practice your own religious beliefs;
- (6) privacy, including privacy during visits and telephone calls;
- (7) complain about the facility and to organize or participate in any program that presents residents' concerns to the administrator of the facility;
- (8) have facility information about you maintained as confidential;
- (9) retain the services of a physician of your choice, at your own expense or through a health care plan, and to have a physician explain to you, in language you understand, your complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;
- (10) participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;
- (11) a written statement or admission agreement describing the services provided by the facility and the related charges;
- (12) manage your own finances or to delegate that responsibility to another person;
- (13) access money and property you have deposited with the facility and to an accounting of your money and property that are deposited with the facility and of all financial transactions made with or on behalf of you;
- (14) keep and use personal property, secure from theft or loss;
- (15) not be relocated within the facility, except in accordance with nursing facility regulations;
- (16) receive visitors;
- (17) receive unopened mail and to receive assistance in reading or writing correspondence;
- (18) participate in activities inside and outside the facility;
- (19) wear your own clothes;



State Regulations pertaining to category\_resident\_rights TX

- (20) discharge yourself from the facility unless you have been adjudicated mentally incompetent;
- (21) not be discharged from the facility, except as provided in the nursing facility regulations;
- (22) be free from any physical or chemical restraints imposed for the purposes of discipline or convenience and not required to treat your medical symptoms
- (23) receive information about prescribed psychoactive medication from the person who prescribes the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by the Health and Safety Code, §242.505, and to refuse to consent to the prescription of psychoactive medications; and
- (24) place an electronic monitoring device in your room that is owned and operated by you or provided by your guardian or legal representative.

Your rights may be restricted only to the extent necessary to protect you or another person from danger or harm or to protect a right of another resident, particularly those relating to privacy and confidentiality.

(c) The facility must give a copy of the Statement of Resident Rights to each resident, next of kin or guardian, and facility staff member. The facility must maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the facility records.

(d) The Statement of Resident Rights must be posted in accordance with §19.1921 of this title (relating to General Requirements for a Nursing Facility).

Source Note: The provisions of this §19.401 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective July 1, 2002, 27 TexReg 4362

RULE §19.402 Exercise of Rights

- (a) The resident has the right to exercise his rights as a resident at the facility and as a citizen or resident of the United States.
- (b) The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his rights.
- (c) In the case of a resident adjudged incompetent under the laws of the State of Texas by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under Texas law to act on the resident's behalf.
- (d) The facility must comply with all applicable provisions of the Human Resources Code, Title 6, Chapter 102. An individual may not be denied appropriate care on the basis of his race, religion, color, national origin, sex, age, handicap, marital status, or source of payment.
- (e) The facility must allow the resident the right to observe his religious beliefs. The facility must respect the religious beliefs of the resident in accordance with 42 United States Code §1396f.
- (f) Competent adults may issue directives or durable powers of attorney for health care, subject to the requirements of §19.419 of this title (relating to Directives and Durable Powers of Attorney for Health Care).
- (g) In the case of a resident not adjudicated incompetent by a state court, any legal surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law.

State Regulations pertaining to category\_resident\_rights TX

Source Note: The provisions of this §19.402 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408.

RULE §19.403 Notice of Rights and Services

- (a) The facility must inform the resident, the resident's next of kin or guardian, both orally and in writing, in a language that the resident understands, of his rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.
- (b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:
- (1) facility admission policies;
  - (2) a description of the protection of personal funds as described in §19.404 of this title (relating to Protection of Resident Funds);
  - (3) the Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Human Resources Code, Title 6, Chapter 102;
  - (4) a written description of the services available through the Office of the State Long Term Care Ombudsman, Texas Department on Aging. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and legal representatives; and
  - (5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:
    - (A) the drug testing of employees who have direct contact with residents; and
    - (B) the criminal history checks of employees and applicants for employment.
- (c) Receipt of information in subsections (a)-(b) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.
- (d) The facility must post a copy of each document specified in subsections (a)-(b) of this section in a conspicuous location.
- (e) The resident or his legal representative has the following rights:
- (1) upon an oral or written request, to access all records pertaining to himself, including clinical records, within 24 hours (excluding weekends and holidays); and
  - (2) after receipt of his records for inspection, to purchase photocopies of all or any portion of the records, at a cost not to exceed the community standard, upon request and two workdays advance notice to the facility.
- (f) The resident has the right to be fully informed in language that he can understand of his total health status, including but not limited to, his medical condition.
- (g) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §19.419 of this title (relating to Directives and Medical Powers of Attorney)), and to refuse to participate in experimental research.
- (1) If the resident refuses treatment, he must be informed of the possible consequences.
  - (2) If the resident chooses to participate in experimental research, he must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.
  - (3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 Code of Federal Regulations, Part 4b, Subpart A.

State Regulations pertaining to category\_resident\_rights TX

(h) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay (if there are any changes), of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate. Notice must be in writing, at least 30 days in advance of the effective date of any changes in rates for services not covered by the current charge, or in Medicaid-certified facilities, by Medicaid.

(i) The facility must furnish a written description of legal rights, which includes: ‘

(1) a description of the manner of protecting personal funds, described in §19.404 of this title (relating to Protection of Resident Funds);

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as DHS, the state ombudsman program, the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with DHS concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(j) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his care.

(k) Notification of changes.

(1) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is:

(A) an accident involving the resident that results in injury and has the potential for requiring physician intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) a decision to transfer or discharge the resident from the facility.

(2) The facility also must promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

(A) a change in room or roommate assignment as described in §19.701(5)(B) of this title (relating to Quality of Life); or

(B) a change in resident rights under federal or state law or regulations as described in subsection (a) of this section.

(3) The facility must record and periodically update the address and phone number of the resident's family or legal representative, or a responsible party.

(l) Additional requirements for Medicaid-certified facilities. Medicaid-certified facilities must:

(1) provide the resident with the state-developed notice of rights under §1919(e)(6) of the Social Security Act (see also §19.402 of this title (relating to Exercise of Rights));

(2) 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:

(A) the items and services that are included in nursing facility services provided under the State Plan and for which the resident may not be charged;

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- (B) 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;
- (3) inform each resident when changes are made to the items and services specified in paragraphs (2)(A) and (2)(B) of this subsection;
- (4) furnish a written description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under §1924(c) of the Social Security Act, which:
  - (A) is used to determine the extent of a couple's nonexempt resources at the time of institutionalization; and
  - (B) attributes to the community spouse an equitable share of resources that cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his process of spending down to Medicaid eligibility levels; and
- (5) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive funds for previous payments covered by such benefits.

Source Note: The provisions of this §19.403 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective May 1, 2002, 27 TexReg 3207; amended to be effective August 1, 2002, 27 TexReg 6052

RULE §19.404 Protection of Resident Funds

- (a) Management of financial affairs. The resident has the right to manage his financial affairs and the facility may not require residents to deposit their personal funds with the facility. The resident may designate another person to manage his financial affairs.
- (b) Management of personal funds.
  - (1) Licensed-only facilities. Upon written authorization of a resident, the facility may hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility. The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the resident's personal funds.
  - (2) Medicaid-certified facilities. 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, as described in §19.405 of this title (relating to Additional Requirements for Trust Funds in Medicaid-Certified Facilities). The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the resident's personal funds.
- (c) Statement of resident rights and responsibilities. The facility must provide each resident and responsible party with a written statement at the time of admission that meets the following requirements:
  - (1) the statement describes the resident's rights to select how personal funds will be handled. The following alternatives must be included:
    - (A) the resident has the right to manage his financial affairs;
    - (B) the facility may not require residents to deposit their personal funds with the facility;
    - (C) the facility has an obligation, upon written authorization of a resident, to hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility;

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(D) the resident has a right to apply to the Social Security Administration to have a representative payee designated for federal or state benefits to which he may be entitled; and

(E) except when subparagraph (D) of this paragraph applies, the resident has a right to designate in writing another person to manage personal funds;

(2) the statement notes, when applicable, that any charge for the facility handling a Medicaid recipient's personal funds is included in the facility's basic rate; and

(3) the statement advises the resident that the facility must have written permission from the resident, responsible party, or legal representative to handle his personal funds.

Source Note: The provisions of this §19.404 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.405 Additional Requirements for Trust Funds in Medicaid-certified Facilities

(a) Deposit of funds. The facility must keep funds received from a resident for holding, safeguarding, and accounting, separate from the facility's funds. This separate account must be identified "Trustee, (Name of Facility), Resident's Trust Fund Account." A facility may commingle the trust funds of Medicaid recipients and private-pay residents. If the funds are commingled, the facility must provide, upon request, the following information. This information must be provided to the Texas Department of Human Services (DHS), the Texas attorney general's Medicaid Fraud Control Unit, and the U.S. Department of Health and Human Services:

(1) copies of release forms signed and dated by each private-pay resident or responsible party whose funds are commingled. The facility must include in the release forms permission for the facility to maintain trust fund records of private-pay residents in the same manner as the Medicaid recipient's trust funds. The release forms must:

(A) be secured from the private-pay residents upon admission or at the time of request for trust fund services; and

(B) include a provision allowing inspection of the private-pay resident's trust fund records by the agencies referenced in this subsection; and

(2) legible copies of the trust fund records of private-pay residents whose funds are commingled. The facility must keep these records in the same manner as the financial records of Medicaid recipients as specified in this section.

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

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

(d) Accounting and records. The facility must establish and maintain current, written, individual records of all financial transactions involving the resident's personal funds that the facility is holding, safeguarding, and accounting. The facility must keep these records in accordance with the American Institute of Certified Public Accountants' Generally Accepted Accounting Standards. The facility must also keep records in accordance with requirements of law for a trustee in a fiduciary relationship that exists for these financial transactions. The facility must include at least the following in these records:

(1) resident's name;

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- (2) identification of resident's representative payee, responsible party, or legal representative, if any;
- (3) admission date;
- (4) resident's earned interest, if any;
- (5) documentation for all transactions. Facility staff must document, on the resident's trust-fund ledger or deposit/withdrawal document, the date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds and the balance after each transaction. Each withdrawal must be signed by the resident on the trust-fund ledger or deposit/withdrawal document. If the resident cannot sign, the transaction must be signed by at least one witness. This witness can be any person except the person(s) responsible for accounting for the trust funds, that person's supervisor, or the person(s) who accepts the withdrawn funds; and
- (6) receipts for purchases and payments, including cash-register tapes or sales statements from a seller. Receipts are required when the purchase is made by the facility or someone other than the resident, responsible party, legal representative, or individual, other than facility personnel, authorized in writing by the resident, and when the purchase is for items costing more than one dollar. Receipts are not required when purchase is made by the resident, responsible party, legal representative, or individual, other than facility personnel, authorized in writing by the resident, or when the item(s) purchased costs one dollar or less. Required receipts must contain:
  - (A) the resident's name;
  - (B) the date the receipt was written or created;
  - (C) the amount of money spent for the resident;
  - (D) the specific item(s) purchased with the trust-fund money;
  - (E) the name of the business from which the purchase was made; and
  - (F) the signature of the resident. If the signature of the resident cannot be obtained, the signature of a witness as described in paragraph (5) of this subsection must be obtained; and the facility or DHS staff must be able to determine, at a future audit date, the witness's name, address, and relationship to the resident or facility. If the disbursement has been prior authorized as evidenced by the resident's or witness's signature and date on the trust-fund ledger or deposit/withdrawal documents, the signature is not required on the receipt.
- (e) 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 less than SSI resource limit for one person, specified in §1611(a)(3)(B) of the Social Security Act; 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.
- (f) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate, or make a bona fide effort to locate the responsible party or heir to the estate (see also §19.416 of this title (relating to Personal Property)). Within 30 days of a Medicaid recipient's death, the facility must use the following procedures to clear the recipient's account:

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(1) the facility must set up a trust fund for the deceased recipient or deposit the money to already existing accounts;

(2) once DHS-designated regional staff verify that the money owed the deceased recipient is on hand and held in trust, DHS considers the account cleared if the facility supplies DHS with a notarized affidavit outlining the facility's intention. The affidavit must contain:

(A) the recipient's name;

(B) the amount of money being held;

(C) the facility's efforts to locate the responsible party or heirs;

(D) a facility statement acknowledging that this money is not the property of the facility, but the property of the deceased person's estate; and

(E) a statement that the facility will hold the money in trust until the legal heir or responsible party is located or the money escheats to the state. Money held in trust in the facility is subject to future audit and will be reviewed each time the facility is audited; and

(3) facilities choosing not to hold this money in trust for Medicaid recipients may send the money to the Texas Department of Human Services, Fiscal Division, P.O. Box 149055, Austin, Texas 78714-9055, at any time before the money escheats to the state. The money must be identified as escheat money. The facility must include the notarized affidavit described in paragraph (2) of this subsection with the money for identification.

(g) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary of Health and Human Services to assure the security of all personal funds of residents deposited with the facility.

(1) The amount of a surety bond must equal the average monthly balance of all the facility's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(2) Resident trust fund accounts are specific only to the single facility purchasing a resident trust fund surety bond.

(3) If a facility employee is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the facility that would have been made out of the trust fund had the loss not occurred.

(h) 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 under Medicaid or Medicare. Items or services included in Medicare or Medicaid payment which may not be billed to the resident's personal funds by the facility include:

(1) nursing services as required in §19.1001 of this title (relating to Nursing Services);

(2) dietary services as required in §19.1101 of this title (relating to Dietary Services);

(3) an activities program as required in §19.702 of this title (relating to Activities);

(4) room and bed maintenance services;

(5) routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to:

(A) hair hygiene supplies;

(B) comb;

(C) brush;

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(D) bath soaps, disinfecting soaps, or specialized cleansing agents when indicated to treat special skin problems or to fight infection;

(E) razor;

(F) shaving cream;

(G) toothbrush;

(H) toothpaste;

(I) denture adhesive;

(J) denture cleaner;

(K) dental floss;

(L) moisturizing lotion;

(M) tissues;

(N) cotton balls;

(O) cotton swabs;

(P) deodorant;

(Q) incontinent care and supplies, to include, but not limited to cloth or disposable briefs (diapers), to be provided as follows:

(i) if attaining or maintaining the resident's highest practicable physical, mental, or psychosocial well-being necessitates the use of briefs (diapers), the facility must provide them. The type of brief (diaper) provided should be based on an individual assessment of the resident's medical and psychosocial condition.

(ii) If the family makes written request to the facility to put briefs (diapers) on the recipient, and the attending physician and director of nurses (DON) document in the clinical record that there is no medical or psychosocial need for briefs (diapers), the recipient, responsible party, or family may be billed for the briefs (diapers), or the recipient's personal funds may be used to purchase the items, or both;

(R) sanitary napkins and related supplies;

(S) towels;

(T) washcloths;

(U) hospital gowns;

(V) over-the-counter drugs;

(W) hair and nail hygiene services;

(X) bathing; and

(Y) personal laundry; and

(6) medically-related social services as required in §19.703 of this title (relating to Social Services General Requirements).

(i) Items and services that may be charged to a resident's personal funds. The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with §19.2601 of this title (relating to Vendor Payment (Items and Services Included)). The following list contains general categories and examples of items and services that the facility may charge to a resident's personal funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(1) telephone;

(2) television and/or radio for personal use;

(3) personal comfort items, including smoking materials, notions and novelties, and confections;



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- (4) cosmetics and grooming items and services in excess of those for which payment is made under Medicare or Medicaid;
  - (5) personal clothing;
  - (6) personal reading material;
  - (7) gifts purchased on behalf of a resident;
  - (8) flowers and plants;
  - (9) social events and entertainment offered outside the scope of the activities program, provided under §19.702 of this title (relating to Activities);
  - (10) noncovered special care services, such as privately hired nurses and aides;
  - (11) private room, except when therapeutically required, such as isolation for infection control; and
  - (12) specially-prepared or alternative food requested instead of the food generally prepared by the facility, as required in §19.1101 of this title (relating to Dietary Service).
- (j) Request for items or services that may be charged to a resident's personal funds. The facility must:
- (1) not charge a resident, nor his representative, for any item or service not requested by the resident;
  - (2) not require a resident, nor his representative, to request any item or service as a condition of admission or continued stay; and
  - (3) inform the resident or his representative, when he requests an item or service for which a charge will be made, that there will be a charge for the item or service and the amount of the charge.
- (k) Access to financial record. The individual financial record must be available on request to the resident, responsible party, or legal representative.
- (l) Quarterly statement. The individual financial record must be available, through quarterly statements and on request, to the resident or his legal representative. The statement must reflect any recipient funds which the facility has deposited in an account as well as any recipient funds held by the facility in a petty cash account. The statement must include at least the following:
- (1) balance at the beginning of the statement period;
  - (2) total deposits and withdrawals;
  - (3) interest earned, if any;
  - (4) identification number and location of any account in which the recipient's personal funds have been deposited; and
  - (5) ending balance.
- (m) Banking charges.
- (1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the recipient, family, or responsible party. These costs, however, may be reported as allowable costs by the facility on its cost report.
  - (2) Bank service charges and charges for checks and deposit slips may be deducted from the individual checking accounts if it is the recipient's written, individual choice to have this type of account to preserve his dignity and independence.
  - (3) Bank fees on individual accounts established solely for the convenience of the facility are the responsibility of the facility and may not be charged to the recipient, family, or

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responsible party. However, the facility may report these costs as allowable costs on its cost report.

(4) The facility may not charge the recipient, family, or responsible party for the administrative handling of either type of account. These costs may be reported as allowable costs by the facility on its cost report.

(5) If the facility places any part of the resident's money in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating residents on an equitable basis. If pooled accounts are used, interest must be prorated on the basis of actual earnings or end-of-quarter balances.

(n) Access to funds.

(1) Personal funds held in the facility. Upon a Medicaid recipient's request, or transfer or discharge, the facility must return to the recipient, the representative payee, responsible party, or the legal representative the full balance of the recipient's personal funds that the facility has received for holding, safeguarding, and accounting. Because funds held in the facility are usually small amounts, the facility is expected to meet this requirement during normal business hours at the time of request, transfer, or discharge, whichever occurs first. Response to requests received during hours other than normal business hours must be made immediately at the beginning of the next normal business hours. For purposes of this paragraph, normal business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding national holidays.

(2) Personal funds held outside the facility. Upon request or if a recipient is transferred or discharged, the facility must, within five business days, return to the recipient, representative payee, responsible party, or the legal representative the full balance of a recipient's personal funds that the facility has deposited in an account, including any interest accrued.

(o) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI Supplemental Security Income (SSI) benefit to which the recipient is entitled should be paid through a representative payee, the provisions in 20 Code of Federal Regulations (CFR), §§404.2001-404.2065, for Old Age, Survivors, and Disability Insurance benefits and 20 CFR, §§416.601-416.665, for SSI benefits apply.

(p) Change of ownership. If the ownership of a facility changes, the old owner must transfer the bank balances or trust funds to the new owner with a list of the residents and their balances. The old owner must get a receipt from the new owner for the transfer of these funds. The old owner must keep this receipt for audit purposes.

(q) Alternate forms of documentation. Without prior written approval of DHS, alternate forms of documentation, including affidavits, will not be accepted by DHS to verify the resident's personal fund expenditures or as proof of compliance with any requirements specified in these requirements for resident's personal funds.

(r) Limitation on certain charges. A nursing facility may not impose charges for certain Medicaid-eligible individuals, for nursing facility services that exceed the per diem amount established by DHS for such services. "Certain Medicaid-eligible individuals" means an individual who is entitled to medical assistance for nursing facility services, but for whom such benefits are not being paid because, in determining the individuals' income to be applied monthly to the payment for the costs of nursing facility services, the amount of such income exceeds the payment amounts established by DHS.

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Source Note: The provisions of this §19.405 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective September 1, 2003, 28 TexReg 6941; amended to be effective August 31, 2004, 29 TexReg 8140

RULE §19.406 Free Choice

(a) Resident rights. The resident has the right to:

(1) choose and retain a personal attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility;

(2) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State of Texas, participate in planning care and treatment or changes in care and treatment. See §19.419 of this title (relating to Directives and Durable Powers of Attorney).

(b) Licensed-only facilities. The resident must be allowed complete freedom of choice to obtain pharmacy services from any pharmacy that is qualified to perform the services. A facility must not require residents to purchase pharmaceutical supplies or services from the facility itself or from any particular vendor. The resident has the right to be informed of prices before purchasing any pharmaceutical item or service from the facility, except in an emergency.

(c) Additional requirements regarding freedom of choice for Medicaid recipients. The recipient must be allowed complete freedom of choice to obtain any Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services, unless the provider causes the facility to be out of compliance with the requirements specified in this chapter.

(1) A facility must not require recipients to purchase supplies or services, including pharmaceutical supplies or services, from the facility itself or from any particular vendor. The recipient has the right to be informed of prices before purchasing any item or services from the facility, except in an emergency (see §19.1502(b)(3) of this title (relating to Choice of Pharmacy Provider)).

(2) The facility must furnish Medicaid recipients with complete information about available Medicaid services, how to obtain these services, their rights to freely choose service providers as specified in this subsection and the right to request a hearing before the Texas Department of Human Services (DHS) if the right to freely choose providers has been abridged without due process.

Source Note: The provisions of this §19.406 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.407 Privacy and Confidentiality

The resident has the right to personal privacy and confidentiality of his personal and clinical records. (See also §19.1910(e) of this title (relating to Clinical Records) and §19.403(e) of this title (relating to Notice of Rights and Services).)

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.

(2) Except as provided in paragraph (3)(B) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside of the facility.

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(3) 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

(C) during surveys.

(4) The facility must ensure the resident's right to privacy in the following areas:

(A) accommodations as described in §19.1701 of this title (relating to General Requirements);

(B) medical treatment. The facility must provide privacy to each resident during examinations, treatment, case discussions, and consultations. Staff must treat these matters confidentially;

(C) personal care;

(D) access and visitation as described in §19.413 of this title (relating to Access and Visitation Rights);

(E) governmental searches are permitted only if there exists probable cause to believe an illegal substance or activity is being concealed. Administrative searches by the appropriate entity, such as the fire inspector, are allowed only for limited purposes, but such searches would not ordinarily extend to the resident's personal belongings. The Texas Department of Human Services (DHS) and the nursing facility must provide for and allow residents their individual freedoms. State statutes authorize inspections of the nursing facility but do not authorize inspection of those areas in which an individual has a reasonable expectation of privacy. Any direct participation by DHS personnel in an inspection of "the contents of residents' personal drawers and possessions," is in violation of federal and state law; and

(F) the resident has the right to privacy for meetings with family and resident groups.

(5) All information that contains personal identification or descriptions which would uniquely identify an individual resident or a provider of health care is considered to be personal and private and will be kept confidential. Personal identifying information (except for PCN numbers) will be deleted from all records, reports, and/or minutes from formal studies which are forwarded to DHS, or anyone else. These records, reports, and/or minutes, which have been de-identified, will still be treated as confidential. All such material mailed to DHS or anyone else must be in a sealed envelope marked "Confidential."

Source Note: The provisions of this §19.407 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.408 Grievances

(a) A resident has the right to:

(1) voice grievances without discrimination or reprisal. These grievances include those with respect to treatment which has been furnished as well as that which has not been furnished;

(2) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents; and

(3) notify state agencies of complaints against a facility. Complaints will be acknowledged by the staff of the agency that receives the complaint. All complaints will be investigated, whether oral or written.

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(b) A nursing facility may not retaliate or discriminate against a resident, a family member or guardian of the resident, or a volunteer because the resident, the resident's family member or guardian, a volunteer, or any other person:

- (1) makes a complaint or files a grievance concerning the facility;
- 2) reports a violation of law, including a violation of laws or regulations regarding nursing facilities; or
- (3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.\

Source Note: The provisions of this §19.408 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective May 1, 2002, 27 TexReg 2832

### RULE §19.409 Examination of Survey Results

The resident has the right to:

- (1) examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and
- (2) receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

Source Note: The provisions of this §19.409 adopted to be effective May 1, 1995, 20 TexReg 2393.

### RULE §19.410 Refunds in Medicaid-certified Facilities

(a) The nursing facility must refund private funds paid to the facility for periods covered by Medicaid, including retroactive periods of Medicaid coverage, when:

- (1) the Medicaid vendor payment has been accepted by the nursing facility; or
- (2) the nursing facility has been notified by the Texas Department of Human Services (DHS) about an individual's eligibility for Medicaid.

(b) The nursing facility must make the refund within 30 days of:

- (1) notification of eligibility for nursing home coverage;
- (2) notification of correction of applied income (see also §19.2316(f) of this title (relating to Collection of Applied Income) which specifies procedures concerning applied income refunds at the time of discharge); or
- (3) receipt of any vendor payment from DHS for any covered period.

(c) When the facility becomes aware of the need for a refund as indicated in subsection (a) of this section, facility staff must write to the resident or his responsible party, notifying him about his right to a refund and the amount due.

Source Note: The provisions of this §19.410 adopted to be effective May 1, 1995, 20 TexReg 2393.

### RULE §19.411 Work

The resident has the right to:

- (1) refuse to perform services for the facility; and
- (2) perform services for the facility, if he 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 are voluntary or paid;

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- (C) compensation for paid services is at or above prevailing rates; and
- (D) the resident agrees to the work arrangement described in the plan of care.

Source Note: The provisions of this §19.411 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.412 Mail

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

- (1) send and receive mail promptly that is unopened;
- (2) request facility staff to help open and read incoming mail and help address and post outgoing mail;
- (3) have access to stationery, postage, and writing implements at the resident's own expense.

Source Note: The provisions of this §19.412 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.413 Access and Visitation Rights

(a) The resident has the right and the facility must provide immediate access to any resident by the following:

- (1) in Medicaid-certified facilities, any representative of the Secretary of Health and Human Services;
- (2) any representative of the State of Texas;
- (3) the resident's individual physician;
- (4) any representative of the Office of the State Long Term Care Ombudsman Program, Texas Department on Aging;
- (5) any representative of Advocacy Incorporated, Agency on Aging, or the office of the state long-term-care ombudsman who is responsible for the protection and advocacy systems for developmentally disabled individuals established under the Developmental Disabilities Assistance and Bill of Rights Act, part C;
- (6) any representative of the Texas Department of Mental Health and Mental Retardation who is responsible for the protection and advocacy systems for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;
- (7) subject to the residents' right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and
- (8) subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) 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.

(c) The facility must allow representatives of the state ombudsman cited in subsection (a)(4) of this section to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state law.

Source Note: The provisions of this §19.413 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.414 Telephone

(a) The resident has the right to have reasonable access to the use of a telephone (other than a pay phone), where calls can be made without being overheard, and which can also be used for making calls to summon help in case of emergency.

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(b) The facility must permit residents to contract for private telephones at their own expense. The facility must not require private telephones to be connected to a central switchboard.

Source Note: The provisions of this §19.414 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.415 Postmortem Procedures

The facility must have policies regarding postmortem procedures, including soliciting and meeting the resident's or families' requests regarding notification of a death, disposition of possessions or personal property, and choice of funeral homes.

Source Note: The provisions of this §19.415 adopted to be effective March 1, 1998, 23 TexReg 1314.

RULE §19.416 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. Reasons for any limitations are documented in the resident's clinical record. See §19.1921(i) of this title (relating to General Requirements for a Nursing Facility).

(1) If the resident dies, personal property must be transferred to the estate or the person designated by the resident.

(2) If it is donated or sold to the facility by the resident or estate, the transaction must be documented.

(3) If the resident dies and there is no responsible party, family, or legal guardian and no arrangements have been made for the disposition of property, the facility must dispose of property according to the Texas Property Code, Title 6, Chapter 71 (concerning Escheat of Property) and according to the Texas Probate Code, Chapter 10 (concerning Payment of Estates into State Treasury).

Source Note: The provisions of this §19.416 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective July 1, 1996, 21 TexReg 4408.

RULE §19.417 Married Couples

The resident must be ensured privacy for visits with his spouse. The resident has the right to share a room with his spouse when married residents live in the same facility and both spouses consent to the arrangement.

Source Note: The provisions of this §19.417 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.418 Self-administration of Drugs

An individual may self-administer drugs if the interdisciplinary team, as defined in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), has determined that this practice is safe.

Source Note: The provisions of this §19.418 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.419 Directives and Medical Powers of Attorney

(a) Competent adults may issue advance directives in accordance with applicable laws.

(b) The nursing facility must maintain policies and procedures regarding the following rules with respect to all adult individuals receiving services provided by the facility:

(1) the facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the

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facility is unwilling or unable to provide or withhold in accordance with an advance directive;

(2) upon admission, all individuals must be provided with the following written information:

(A) the individual's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives; and

(B) the nursing facility's policies respecting the implementation of these rights including the written policies regarding the implementation of advance directives;

(3) the nursing facility must document in the resident's clinical record whether or not the individual has executed an advance directive;

(4) the nursing facility must not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(5) the facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives;

(6) the facility must provide, individually or with others, for education for staff and the community on issues concerning advance directives. For the community, this may include, but is not limited to, newsletters, articles in the newspaper, local news reports, or commercials. For educating staff, this may include, but is not limited to, in-service programs;

(7) the facility must provide the attending physician with any information relating to a known existing Directive to Physicians and/or Living Will or Medical Power of Attorney, and assist with coordinating physicians' orders with any resident directive;

(8) when an individual is in a comatose or otherwise incapacitated state, and therefore is unable to receive information or articulate whether he has executed an advance directive:

(A) written information regarding advance directives, including facility policies regarding the implementation of advance directives, must be provided in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

i) the person admitting the resident.

(B) if the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice;

(9) if a resident, who was incompetent or otherwise incapacitated and unable to receive information regarding advance directives, including written policies regarding the implementation of advance directives, later becomes able to receive the information, the facility must provide the written information at the time the individual becomes able to receive the information; and

(10) when the resident or a relative, surrogate, or other concerned or related individual presents the facility with a copy of the individual's advance directive, the facility must comply with the advance directive including recognition of a Medical Power of Attorney,



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to the extent allowed under state law. If no one comes forward with a previously executed advance directive and the resident is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must note that the individual was not able to receive information and was unable to communicate whether an advance directive existed.

(c) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(d) Nursing facilities that provide services to children must ensure that:

(1) prior to admission to the facility, the primary physician, who has been providing care to the child, has discussed advance directives with the family or guardian and documented this discussion; and

(2) the decision made by the family or guardian regarding advance directives is addressed in the comprehensive care plan (see §19.802 of this title (relating to Comprehensive Care Plans)).

Source Note: The provisions of this §19.419 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779

RULE §19.420 Documentation for the Delegation of Long-Term Care Resident's Rights

(a) The delegation of resident rights may occur in three cases:

(1) when a competent individual chooses to allow another to act for him, such as with a Durable Power of Attorney;

(2) when the resident has been adjudicated to be incompetent by a court of law and a guardian has been appointed; or

(3) when the physician has determined that, for medical reasons, the resident is incapable of understanding and exercising such rights. The Health and Safety Code, Chapter 313, Consent to Medical Treatment, provides guidance under certain circumstances when a resident is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

(b) In order to assure preservation of rights, the physician and the facility must document specific information concerning the incapability of the resident to understand and exercise his rights.

(c) Facility documentation must cover:

(1) the relationship of the resident to the person assuming his rights and responsibilities;

(2) the authority allowing the responsible person to act for the resident;

(3) resident assessments, care plans, and progress notes that address the resident's inability to exercise his rights and responsibilities; and

(4) assurance that the resident who is mentally capable of understanding and exercising his rights, but physically incapable of doing so, receives interventions which facilitate the exercise of his rights.

(d) Physician documentation must cover:

(1) resident's comatose state, incapacity, or other mental or physical inability to communicate;

(2) proposed medical treatment or decision;

(3) periodic assurance that there has been no essential change in the resident's mental function; and

(4) reevaluation whenever a significant change in resident status occurs or for orders that impact on resident rights (such as "No CPR").

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Source Note: The provisions of this §19.420 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.421 Refusal of Certain Transfers in Medicaid-certified Facilities

(a) An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate:

(1) a resident of a skilled nursing facility (SNF) from the distinct part of the facility that is an SNF to a part of the facility that is not an SNF; or

(2) a resident of a nursing facility from the distinct part of the facility that is a nursing facility to a distinct part of the facility that is an SNF.

(b) A resident's exercise of the right to refuse transfer under this section does not affect the individual's eligibility or entitlement to Medicaid benefits.

Source Note: The provisions of this §19.421 adopted to be effective May 1, 1995, 20 TexReg 2393.

RULE §19.422 Authorized Electronic Monitoring (AEM)

(a) A facility must permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized video monitoring.

(c) The Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents by July 1, 2003. A copy of the form must be maintained in the active portion of the resident's clinical record.

Figure: 40 TAC §19.422(c)

Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring

A resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring (AEM) under Subchapter R, Chapter 242, Health and Safety Code. To request AEM, you, your guardian or your legal representative must:

1) complete the Request for Authorized Electronic Monitoring form (available from the facility);

2) obtain the consent of other residents, if any, in your room, using the Consent to Authorized Electronic Monitoring form (available from the facility); and

3) give the form(s) to the facility administrator or designee.

Who may request AEM?

1) The resident, if the resident has capacity to request AEM and has not been judicially declared to lack the required capacity.

2) The guardian of the resident, if the resident has been judicially declared to lack the required capacity.

3) The legal representative of the resident, if the resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity.

Who determines if the resident does not have the capacity to request AEM?

The resident's physician will make the determination regarding the capacity to request AEM. When the resident's physician has determined the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

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- 1) a person named in the resident's medical power of attorney or other advance directive;
- 2) the resident's spouse;
- 3) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;
- 4) a majority of the resident's reasonably available adult children;
- 5) the resident's parents; or
- 6) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

Who may consent to AEM?

- 1) The other resident(s) in the room.
- 2) The guardian of the other resident, if the resident has been judicially declared to lack the required capacity.
- 3) The legal representative of the other resident, if the resident does not have capacity to sign the form, but has not been judicially declared to lack the required capacity. The legal representative is determined by following the procedure for determining a legal representative, as stated above, under "Who determines if the resident does not have the capacity to request AEM?"

Can a resident be discharged or refused admittance for requesting AEM?

A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct AEM. If either of these situations occur, you should report the occurrence to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

What about covert electronic monitoring?

A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. A facility attempting to discharge a resident because of covert electronic monitoring should be reported to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

What is required if a covert electronic monitoring device is discovered?

If a covert electronic monitoring device is discovered by a facility and is no longer covert as defined in §242.843, Health and Safety Code, the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?

Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that an electronic monitoring device is monitoring the room.

What is required for the installation of monitoring equipment?

The resident or the resident's guardian or legal representative must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. A facility may also require that AEM be conducted in plain view.

The facility must make reasonable physical accommodation for AEM, which includes providing:

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- 1) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and
- 2) access to power sources for the video surveillance camera or other electronic monitoring device.

If the facility refuses to permit AEM or fails to make reasonable physical accommodations for AEM, you should report the facility's refusal to the local office of Long Term Care-Regulatory, Texas Department of Human Services.

Are facilities subject to administrative penalties for violations of the electronic monitoring rules?

Yes, DHS may assess an administrative penalty of \$500 against a facility for each instance in which the facility:

- 1) refuses to permit a resident or the resident's guardian or legal representative to conduct AEM;
- 2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;
- 3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or
- 4) violates any other provision related to AEM.

How does AEM affect the reporting of abuse and neglect?

The Texas Health and Safety Code, §242.122, requires an individual to report abuse or neglect immediately. Section 242.131 establishes a criminal penalty for failure to report abuse and neglect. If abuse or neglect has occurred, the most important thing is to report it, regardless of whether the reporting meets the legal definition of timely. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect and the criminal penalty for the failure to report abuse or neglect, the following apply:

- 1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.
- 2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.
- 3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.
- 4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.

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5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

What is required for the use of a tape or recording by an agency or court?

Subject to applicable rules of evidence and procedure, a tape or recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding. A court or administrative agency may not admit into evidence a tape or recording created through the use of covert monitoring or AEM or take or authorize action based on the tape or recording unless:

- 1) the tape or recording shows the time and date the events on the tape or recording occurred, if the tape or recording is a video tape or recording;
- 2) the contents of the tape or recording have not been edited or artificially enhanced; and
- 3) any transfer of the contents of the tape or recording was done by a qualified professional and the contents were not altered, if the contents have been transferred from the original format to another technological format.

Are there additional provisions of the law?

A person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

A person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with the Health and Safety Code, Subchapter R, Chapter 242, or a tape or recording made by the device, commits a Class B misdemeanor. It is a defense to prosecution that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

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Signature of Resident/ Person Signing of Behalf of Resident

Date

(d) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated DHS Request for Authorized Electronic Monitoring form to the administrator or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) If a resident has capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(2) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(3) If a resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

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(A) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.

(B) When a resident's physician determines the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

(i) a person named in the resident's medical power of attorney or other advance directive;

(ii) the resident's spouse;

(iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(iv) a majority of the resident's reasonably available adult children;

(v) the resident's parents; or

(vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(e) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM also must obtain the consent of other residents in the room, using the DHS Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the administrator or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) Consent to AEM may be given only by:

(A) the other resident or residents in the room;

(B) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(C) the legal representative of the other resident, determined by following the same procedure established under (d)(3) of this section.

(2) Another resident in the room may condition consent on:

(A) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and

(B) limiting or prohibiting the use of an audio electronic monitoring device.

(3) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, their guardian, or legal representative assumes responsibility for assuring AEM is conducted according to the designated limitations.

(4) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(f) When the completed Request for Authorized Electronic Monitoring form and the Consent to Authorized Electronic Monitoring form, if applicable, have been given to the administrator or designee, AEM may begin.

(1) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(2) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

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(3) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(4) The facility must make reasonable physical accommodation for AEM, which includes providing:

(A) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(B) access to power sources for the video surveillance camera or other electronic monitoring device.

(g) All facilities, regardless of whether AEM is being conducted, must post an 8-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(h) A facility may:

(1) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;

(2) require AEM to be conducted in plain view;

(3) place a resident in a different room to accommodate a request for AEM.

(i) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §242.843, Health and Safety Code, the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(j) DHS may assess an administrative penalty of \$500 against a facility for each instance in which the facility:

(1) refuses to permit a resident, or the resident's guardian or legal representative, to conduct AEM;

(2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;

(3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates any other provision related to AEM.

(k) All instances of abuse or neglect must be reported to DHS, as required by §19.602 of this title (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) by Facilities). For purposes of the duty to report abuse or neglect and the criminal penalty for the failure to report abuse or neglect, established under the Health and Safety Code, §242.122, the following apply:

(1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to

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the tape or recording on or before the seventh day after the date the person receives the tape or recording.

(3) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the tape or recording are transferred from the original technological format, a qualified professional must do the transfer.

(5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Source Note: The provisions of this §19.422 adopted to be effective July 1, 2002, 27 TexReg 4362

RULE §19.423 Model Drug Testing Policy

The Texas Department of Human Services (DHS) is required to provide a model drug testing policy to nursing facilities under the Health and Safety Code, §242.050. A nursing facility is not required to perform drug testing on its employees or applicants for employment. Although this policy only covers drugs, coverage of alcohol may be added. Before implementing any drug testing policy, including the following model policy, DHS recommends that a facility discuss the policy with its attorney.

(1) Policy.

(A) (NURSING FACILITY NAME) has a vital interest in maintaining a safe, healthy, and efficient working environment. Being under the influence of a drug on the job poses serious safety and health risks to the user, co-workers, and residents. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace poses unacceptable risks for safe, healthy, and efficient operations.

(B) (NURSING FACILITY NAME) has the obligation to maintain a safe, healthy and efficient workplace for all of its employees and residents, and to protect the facility's property, information, equipment, operations, and reputation.

(C) (NURSING FACILITY NAME) recognizes its obligation to its residents to provide services that are free of the influence of illegal drugs and endeavors through this policy to provide drug-free services.

(D) (NURSING FACILITY NAME) complies with federal and state rules, regulations, or laws that relate to the maintenance of a workplace free from illegal drugs.

(E) All employees are required to abide by the terms of this policy and to notify management of any criminal drug statute conviction for a violation that occurred in the workplace no later than five days after such conviction.

(2) Purpose. This policy outlines the goals and objectives of (NURSING FACILITY NAME'S) drug testing program and provides guidance to supervisors and employees concerning their responsibilities for carrying out the program.



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(3) Scope. This policy applies to all departments, all employees, and all job applicants. The term employee includes contracted employees.

(4) Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(A) Facility premises--All property of (NURSING FACILITY NAME) including, but not limited to, the offices, facilities, and surrounding areas on (NURSING FACILITY NAME)-owned or -leased property, parking lots, and storage areas. The term also includes (NURSING FACILITY NAME)-owned or -leased vehicles and equipment.

(B) Drug testing--The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug.

(C) Illegal drug--Any drug that is not legally obtainable. Examples of illegal drugs are marijuana, cocaine, heroin, methamphetamines, and phencyclidine (PCP).

(D) Legal drug--Any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which it was prescribed or manufactured.

(E) Reasonable belief--A belief based on facts sufficient to lead a prudent person to conclude that a particular employee is unable to perform his or her job duties due to drug impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.

(F) Under the influence--A condition in which a person is affected by a drug in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion; a scientifically valid test, such as urinalysis or blood analysis; and in some cases by the opinion of a layperson.

(5) Education.

(A) Management personnel are to be trained to:

(i) detect the signs and behavior of employees who may be using drugs in violation of this policy; and

(ii) intervene in situations that may involve violations of this policy.

(B) Employees are to be informed of the provisions of this policy.

(6) Prohibited activities.

(A) Legal drugs. (NURSING FACILITY NAME) reserves the right at all times to judge the effect that a legal drug may have on an employee's job performance and to restrict the employee's work activity or presence at the workplace accordingly.

(B) Illegal drugs. The use, sale, purchase, transfer, or possession of an illegal drug by any employee while on (NURSING FACILITY NAME) premises or while performing (NURSING FACILITY NAME) business is prohibited.

(7) Discipline.

(A) Any employee who possesses, distributes, sells, attempts to sell, or transfers illegal drugs on (NURSING FACILITY NAME) premises or while on (NURSING FACILITY NAME) business will be subject to immediate discharge.

(B) Any employee found through drug testing to have in his or her body a detectable amount of an illegal drug will be subject to discipline up to and including discharge. An

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employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program, approved by (NURSING FACILITY NAME), at the employee's expense. During rehabilitation, the employee will be subject to unannounced drug testing. Upon return to work from rehabilitation, the employee may be subject to unannounced drug testing at (NURSING FACILITY NAME) expense for a period of 12 months. Any employee whose test is confirmed as positive during or following rehabilitation will be subjected to immediate discharge.

(8) Drug testing for job applicants.

(A) All applicants for employment, including applicants for part-time and seasonal positions and applicants who are former employees, are subject to drug testing.

(B) If an applicant refuses to take a drug test, or if evidence of the use of illegal drugs by an applicant is discovered, either through testing or other means, the pre-employment process will be terminated.

(C) An applicant must pass the drug test to be considered for employment.

(D) An applicant will be provided written notice of this policy and, by signature, will be required to acknowledge receipt and understanding of the policy before being tested.

(9) Drug testing of employees.

(A) (NURSING FACILITY NAME) will notify employees of this policy by:

(i) providing them with a copy of the policy and obtaining written acknowledgement that the policy has been received and read.

(ii) announcing the policy in written communications and making presentations at employee meetings.

(B) (NURSING FACILITY NAME) will perform drug testing:

(i) of any employee who exhibits "reasonable belief" behavior;

(ii) of each employee who has direct contact with residents annually;

(iii) of any employee who is subject to drug testing pursuant to federal or state rules, regulations, or laws;

(iv) on a random basis of any employee.

(C) An employee's consent to submit to drug testing is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.

(D) An employee who is tested in a "reasonable belief" situation may be suspended pending receipt of written test results and inquiries that may be required.

(10) Appeal of a drug test result.

(A) An applicant or employee whose drug test was positive will have an opportunity to explain why the positive finding could have resulted from a cause other than drug use.

(NURSING FACILITY NAME) will judge whether the employee's explanation merits further inquiry.

(B) An applicant or employee whose drug test is reported positive will be offered the opportunity to:

(i) obtain and independently test, at their expense, the remaining portion of the urine specimen that yielded the positive result; and

(ii) obtain the written test result and submit it to an independent medical review, at their expense.

(C) During an appeal and any resulting inquiries, the pre-employment selection process for an applicant will be placed on hold, and the employment status of an employee may

be suspended. An employee who is suspended pending appeal may use any available annual leave to remain in an active pay status. If the employee has no annual leave or chooses not to use it, the suspension will be without pay.

(11) Confidentiality. All information related to drug testing or the identification of persons as users of drugs will be protected by (NURSING FACILITY NAME) as confidential unless otherwise required by law or overriding public health and safety concerns, or authorized in writing by the persons in question.

Source Note: The provisions of this §19.423 adopted to be effective August 1, 2002, 27 TexReg 6052

## Utah

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### **R432-150-12. Resident Rights.**

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

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(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility;  
and

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(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

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(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds \$100, the facility must deposit all money in excess of \$100 in an interest-bearing account.

(f) Upon annual license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department. (7) Facility smoking policies must comply with the Utah Indoor Clean Air Act, R392-510, 1995 and the rules adopted there under and Section 31-4.4 of the 1994 Life Safety Code.

**Vermont**

Downloaded 06.08.07

33 V.S.A. § 7301. Nursing home residents' bill of rights

§ 7301. Nursing home residents' bill of rights

The general assembly hereby adopts the Nursing Home Residents' Bill of Rights as follows:

(1) The governing body of the facility shall establish written policies regarding the rights and responsibilities of residents and, through the administrator, is responsible for development of, and adherence to, procedures implementing such policies. These policies and procedures shall be made available to residents, to any guardians, next of kin,

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reciprocal beneficiaries, sponsoring agency, or representative payees selected pursuant to subsection 205(j) of the Social Security Act, and Subpart Q of 20 CFR Part 404, and to the public.

(2) The staff of the facility shall ensure that, at least, each individual admitted to the facility:

(A) is fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission and during the stay, of these rights and of all rules and regulations governing resident conduct and responsibilities. Reasonable accommodation shall be made to communicate the resident's bill of rights to residents with

communication impairments and residents who speak a language other than English;

(B) is fully informed, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under Titles XVIII or XIX of the Social Security Act, or not covered by the facility's basic per diem rate, including the facility's policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items. The facility 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. The facility shall inform residents or their guardians or agents in writing about eligibility for hospice services and the circumstances under which hospice services may be available;

(C) is fully informed, by a physician, of the medical condition, and is afforded the opportunity to participate in the planning of the medical treatment and to refuse to participate in experimental research;

(D) is transferred or discharged only for medical reasons, or for the resident's welfare or that of other residents, or for nonpayment of the resident's stay (except as prohibited by Titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in the resident's medical record. Residents shall be notified in writing of the proposed transfer or discharge and reasons for it at least 72 hours before a transfer within the facility and 30 days before a discharge from the facility. In cases where the health or safety of individuals would be endangered, or an immediate transfer or discharge is required by the resident's urgent medical needs, notice shall be made as soon as practicable before transfer or discharge. Notice shall explain the resident's right to appeal the proposed action, under the facility's grievance procedure and shall include the address and phone number of the area ombudsman. The resident informed of this right may choose to relocate before the notice period ends. The facility shall make reasonable efforts to accommodate new residents without disrupting room assignments;

(E) is encouraged and assisted, throughout the resident's period of stay, to exercise the individual's rights as a resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff or to outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal;

(F) may manage the resident's personal financial affairs, or is given at least a quarterly accounting of financial transactions made on the resident's behalf should the facility accept the resident's written delegation of this responsibility to the facility for any period of time in conformance with state law;

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(G) is 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 self-injury or injury to others. The facility shall inform residents of its restraint policy and appeal rights under the facility's grievance procedure. The policy must include the release of the restraints no less than every two hours for ten minutes for exercise or repositioning. The resident has the right to be free from any physical restraints imposed or psychoactive drugs administered for purposes of discipline or convenience;

(H) is assured confidential treatment of the resident's personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in case of the resident's transfer to another health care institution, or as required by law or third-party payment contract;

(I) is treated with consideration, respect, and full recognition of the resident's dignity and individuality, including privacy in treatment and in care for the resident's personal needs;

(J) is not required to perform services for the facility that are not included for therapeutic purposes in the resident's plan of care;

(K) may associate and communicate privately with persons of the resident's choice, and send and receive the resident's personal mail unopened;

(L) may meet with, and participate in activities of social, religious, and community groups at the resident's discretion;

(M) may retain and use the resident's personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(N) if married or in a reciprocal beneficiaries relationship, is assured privacy for visits by the resident's spouse or reciprocal beneficiary; if both are residents of the facility, they are permitted to share a room;

(O) shall have the right to choose the resident's own personal physician, and the right to request 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 has the right to receive such information from the resident's doctor or the administrators as appropriate;

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

(Q) is assured reasonable access to a telephone located in a quiet area where the resident can conduct a private conversation;

(R) has the right to return to the first available bed in the nursing home the resident came from, after hospitalization if the patient has not retained the resident's bed under subdivision (S) of this subdivision (2), provided the facility is able to meet the resident's medical needs and that the resident's welfare or that of other residents will not be adversely affected;

(S) has the right upon payment of the resident's usual rate or, in the case of Medicaid residents, the resident's certified per diem compensation, to retain the resident's bed in the nursing home while absent from the facility due to hospitalization provided such absence does not exceed ten successive days; and

(T) is provided with professional assessment of pain and its management.



(3) The staff of the facility shall ensure that the residents and their families, including a reciprocal beneficiary:

(A) shall have the right to organize, maintain, and participate in either resident or family councils, or both. The facility shall provide space and, if requested, assistance for meetings. Council meetings shall be afforded privacy, with staff or visitors attending only at the council's invitation. The facility shall respond in writing to written requests from council meetings. Resident councils and family councils shall be encouraged to make recommendations regarding facility policies;

(B) shall have the right to review current and past state and federal survey and inspection reports of the facility, and upon request, to receive a copy of any report from the facility. Copies of reports shall be available for review at any time at one station in the facility.

The facility may charge a reasonable amount for more than one copy per resident.

(Added 1985, No. 153 (Adj. Sess.); amended 1989, No. 71, § 1; 1999, No. 91 (Adj. Sess.), § 36; 2003, No. 162 (Adj. Sess.), § 14.)

### Virginia

Downloaded 08.06.07

12VAC5-371-150. Resident Rights.

A. The nursing facility shall develop and implement policies and procedures that ensure resident's rights as defined in §§32.1-138 and 32.1-138.1 of the Code of Virginia.

B. The procedures shall:

1. Not restrict any right a resident has under law;
2. Provide staff training to implement resident's rights; and
3. Include grievance procedures.

C. The name and telephone number of the compliant coordinator of the center, the Adult Protective Services toll-free telephone number, and the toll-free telephone number for the State Ombudsman shall be conspicuously posted in a public place.

D. Copies of resident rights shall be given to residents upon admittance to the facility and made available to residents currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

E. The nursing facility shall have a plan to review resident rights with each resident annually, or with the responsible family member or responsible agent at least annually, and have a plan to advise each staff member at least annually.

F. The nursing facility shall certify, in writing, that it is compliance with the provisions of §§32.1-138 and 32.1-138.1 of the Code of Virginia, relative to resident rights, as a condition of license issuance or renewal.

Statutory Authority:

§§32.1-12 and 32.1-127 of the Code of Virginia

§ 32.1-138. Enumeration; posting of policies; staff training; responsibilities devolving on guardians, etc.; exceptions; certification of compliance.

A. The governing body of a nursing home facility required to be licensed under the provisions of Article 1 (§ [32.1-123](#) et seq.) of this chapter, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

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1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;
2. Is fully informed, prior to or at the time of admission and during his stay, of services available in the facility and of related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;
3. Is fully informed in summary form of the findings concerning the facility in federal Health Care Financing Administration surveys and investigations, if any;
4. Is fully informed by a physician or nurse practitioner of his medical condition unless medically contraindicated as documented by a physician or nurse practitioner in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;
5. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § [32.1-138.1](#) to ensure orderly transfer or discharge, and such actions are documented in his medical record;
6. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;
7. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;
8. Is 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 patient from injury to himself or to others;
9. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;
10. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
11. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
12. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;
13. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician or nurse practitioner in his medical record;

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14. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician or nurse practitioner in his medical record; and

15. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the facility, is permitted to share a room with such spouse unless medically contraindicated as documented by the attending physician or nurse practitioner in the medical record.

B. All established policies and procedures regarding the rights and responsibilities of patients shall be printed in at least 12-point type and posted conspicuously in a public place in all nursing home facilities required to be licensed under the provisions of Article 1 (§ [32.1-123](#) et seq.) of this chapter. These policies and procedures shall include the name and telephone number of the complaint coordinator in the Division of Licensure and Certification of the Virginia Department of Health, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any substate ombudsman program serving the area. Copies of such policies and procedures shall be given to patients upon admittance to the facility and made available to patients currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

C. The provisions of this section shall not be construed to restrict any right that any patient in residence has under law.

D. Each facility shall provide appropriate staff training to implement each patient's rights included in subsection A hereof.

E. All rights and responsibilities specified in subsection A hereof and § [32.1-138.1](#) as they pertain to (i) a patient adjudicated incapacitated in accordance with state law, (ii) a patient who is found, by his physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or agencies, or representative payee, except when the facility itself is representative payee, selected pursuant to section 205(j) of Title II of the United States Social Security Act.

F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and treatment or nursing service provided to any patient in a nursing institution to which the provisions of § [32.1-128](#) are applicable.

G. It shall be the responsibility of the Commissioner to insure that the provisions of this section and the provisions of § [32.1-138.1](#) are observed and implemented by nursing home facilities. Each nursing home facility to which this section and § [32.1-138.1](#) are applicable shall certify to the Commissioner that it is in compliance with the provisions of this section and the provisions of § [32.1-138.1](#) as a condition to the issuance or renewal of the license required by Article 1 (§ [32.1-123](#) et seq.) of this chapter.

(Code 1950, § 32-296.1; 1976, c. 349; 1979, c. 711; 1987, c. 221; 1997, c. 801; 1999, c. 783; 2000, c. 177; 2004, c. 855.)

§ 32.1-138.1. Implementation of transfer and discharge policies.

A. To implement and conform with the provisions of subdivision A 4 of § 32.1-138, a facility may discharge the patient, or transfer the patient, including transfer within the facility, only:

1. If appropriate to meet that patient's documented medical needs;

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2. If appropriate to safeguard that patient or one or more other patients from physical or emotional injury;
3. On account of nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act and the Virginia State Plan for Medical Assistance Services; or
4. With the informed voluntary consent of the patient, or if incapable of providing consent, with the informed voluntary consent of the patient's authorized decision maker pursuant to § 54.1-2986 acting in the best interest of the patient, following reasonable advance written notice.

B. Except in an emergency involving the patient's health or well being, no patient shall be transferred or discharged without prior consultation with the patient, the patient's family or responsible party and the patient's attending physician. If the patient's attending physician is unavailable, the facility's medical director in conjunction with the nursing director, social worker or another health professional, shall be consulted. In the case of an involuntary transfer or discharge, the attending physician of the patient or the medical director of the facility shall make a written notation in the patient's record approving the transfer or discharge after consideration of the effects of the transfer or discharge, appropriate actions to minimize the effects of the transfer or discharge, and the care and kind of service the patient needs upon transfer or discharge.

C. Except in an emergency involving the patient's health or well being, reasonable advance written notice shall be given in the following manner. In the case of a voluntary transfer or discharge, notice shall be reasonable under the circumstances. In the case of an involuntary transfer or discharge, reasonable advance written notice shall be given to the patient at least five days prior to the discharge or transfer.

D. Nothing in this section or in subdivision A 4 of § 32.1-138 shall be construed to authorize or require conditions upon a transfer within a facility that are more restrictive than Titles XVIII or XIX of the United States Social Security Act or by regulations promulgated pursuant to either title.

(1987, c. 221; 1993, c. 692.)

**Washington**

Downloaded 06.08.07

**Resident Rights**

WAC sections 388-97-055, 388-97-060, and 388-97-065 implement the federal Patient Self-Determination Act and clarify requirements under chapter 11.94 RCW, Power of attorney; chapter 7.70 RCW, Actions for injuries resulting from health care; and chapter 70.122 RCW, Natural Death Act; chapter 11.88 RCW, Guardianship-appointment, qualification, removal of guardians and limited guardians; chapter 11.92 RCW, Guardianship-powers and duties of guardian or limited guardian.

WAC 388-97-051 Resident rights.

(1) The nursing home must meet the resident rights requirements of this section and those in the rest of the chapter.

(2) The resident has a right to a dignified existence, self-determination, and communication with, and access to individuals and services inside and outside the

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nursing home.

(3) A nursing home must promote and protect the rights of each resident, including those with limited cognition or other barriers that limit the exercise of rights.

(4) The resident has the right to:

(a) Exercise his or her rights as a resident of the nursing home and as a citizen or resident of the United States. Refer to WAC [388-97-055](#);

(b) Be free of interference, coercion, discrimination, and reprisal from the nursing home in exercising his or her rights; and

(c) Not be asked or required to sign any contract or agreement that includes provisions to waive:

(i) Any resident right set forth in this chapter or in the applicable licensing or certification laws; or

(ii) Any potential liability for personal injury or losses of personal property.

(5) The nursing home must take steps to safeguard residents and their personal property from foreseeable risks of injury or loss.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-051, filed 2/24/00, effective 3/26/00.]

WAC 388-97-052 Free choice. The resident has the right to:

(1) Choose a personal attending physician.

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being.

(3) Participate in planning care and treatment or changes in care and treatment.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-052, filed 2/24/00, effective 3/26/00.]

WAC 388-97-053 Statutes implemented in resident decision making, informed consent and advance directives. WAC [388-97-055](#), [388-97-060](#), and [388-97-065](#) implement the federal Patient Self-Determination Act and clarify requirements under chapters 11.94; 7.70; 70.122; 11.88; and 11.92 RCW.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-053, filed 2/24/00, effective 3/26/00.]

WAC 388-97-055 Resident decision making. (1) At the time of admission, or not later than the completion of the initial comprehensive resident assessment, the nursing home must determine if the resident:

(a) Has appointed another individual to make his or her health care, financial, or other decisions;

(b) Has created any advance directive or other legal documents that will establish a surrogate decision maker in the future; and

(c) Is not making his or her own decisions, and identify who has the authority for surrogate decision making, and the scope of the surrogate decision maker's authority.

(2) The nursing home must review the requirements of (1) of this section when the resident's condition warrants the review or when there is a significant change in the resident's condition.

(3) In fulfilling its duty to determine who, if anyone, is authorized to make decisions for the resident, the nursing home must:

(a) Obtain copies of the legal documents that establish the surrogate decision maker's authority to act; and

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- (b) Document in the resident's clinical record:
  - (i) The name, address, and telephone number of the individual who has legal authority for substitute decision making;
  - (ii) The type of decision making authority such individual has; and
  - (iii) Where copies of the legal documents are located at the facility.
- (4) In accordance with state law or at the request of the resident, the resident's surrogate decision maker is, in the case of:
  - (a) A capacitated resident, the individual authorized by the resident to make decisions on the resident's behalf;
  - (b) A resident adjudicated by a court of law to be incapacitated, the court appointed guardian; and
  - (c) A resident who has been determined to be incapacitated, but is not adjudicated incapacitated established through:
    - (i) A legal document, such as a durable power of attorney for health care; or
    - (ii) Authority for substitute decision making granted by state law, including RCW 7.70.065.
- (5) Determination of an individual's incapacity must be a process according to state law not a medical diagnosis only and be based on:
  - (a) Demonstrated inability in decision making over time that creates a significant risk of personal harm;
  - (b) A court order; or
  - (c) The criteria contained in a legal document, such as durable power of attorney for health care.
- (6) The nursing home must promote the resident's right to exercise decision making and self-determination to the fullest extent possible, taking into consideration his or her ability to understand and respond. Therefore, the nursing home must presume that the resident is the resident's own decision maker unless:
  - (a) A court has established a full guardianship of the individual;
  - (b) The capacitated resident has clearly and voluntarily appointed a surrogate decision maker;
  - (c) A surrogate is established by a legal document such as a durable power of attorney for health care; or
  - (d) The facility determines that the resident is an incapacitated individual according to RCW 11.88.010 and (5)(a) of this section.
- 7) The nursing home must honor the exercise of the resident's rights by the surrogate decision maker as long as the surrogate acts in accordance with this section and with state and federal law which govern his or her appointment.
- 8) If a surrogate decision maker exercises a resident's rights, the nursing home must take into consideration the resident's ability to understand and respond and must:
  - (a) Inform the resident that a surrogate decision maker has been consulted;
  - (b) Provide the resident with the information and opportunity to participate in all decision making to the maximum extent possible; and
  - (c) Recognize that involvement of a surrogate decision maker does not lessen the nursing home's duty to:
    - (i) Protect the resident's rights; and (ii) Comply with state and federal laws.

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(9) The nursing home must:

- (a) Regularly review any determination of incapacity based on (4)(b) and (c) of this section;
- (b) Except for residents with a guardian, cease to rely upon the surrogate decision maker to exercise the resident's rights, if the resident regains capacity, unless so designated by the resident or by court order; and
- (c) In the case of a guardian notify the court of jurisdiction in writing if:
  - (i) The resident regains capacity;
  - (ii) The guardian is not respecting or promoting the resident's rights;
  - (iii) The guardianship should be modified; or
  - (iv) A different guardian needs to be appointed.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-055, filed 2/24/00, effective 3/26/00; 94-19-041 (Order 3782), § 388-97-055, filed 9/15/94, effective 10/16/94.]WAC 388-97-060 Informed consent.

(1) The nursing home must ensure that the informed consent process is followed with:

- (a) The resident to the maximum extent possible, taking into consideration his or her ability to understand and respond; and
- (b) The surrogate decision maker when the resident is determined to be incapacitated as established through the provision of a legal document such as durable power of attorney for health care, a court proceeding, or as authorized by state law, including RCW 7.70.065. The surrogate decision maker must:

- (i) First determine if the resident would consent or refuse the proposed or alternative treatment;
- (ii) Discuss determination of consent or refusal with the resident whenever possible; and
- (iii) When a determination of the resident's consent or refusal of treatment cannot be made, make the decision in the best interest of the resident.

(2) The informed consent process must include, in words and language that the resident, or if applicable the resident's surrogate decision maker, understands, a description of:

- (a) The nature and character of the proposed treatment;
- (b) The anticipated results of the proposed treatment;
- (c) The recognized possible alternative forms of treatment;
- (d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment including nontreatment; and
- (e) The right of the resident to choose not to be informed.

(3) To ensure informed consent or refusal by a resident, or if applicable the resident's surrogate decision maker, regarding plan or care options, the nursing home must:

- (a) Provide the informed consent process to the resident in a neutral manner and in a language, words, and manner the resident can understand;
- (b) Inform the resident of the right to consent to or refuse care and service options at the time of resident assessment and plan of care development (see WAC [388-97-085](#) and [388-97-090](#)) and with condition changes, as necessary to ensure that the resident's wishes are known;
- (c) Inform the resident at the time of initial plan of care decisions and periodically of the right to change his or her mind about an earlier consent or refusal decision;

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(d) Ensure that evidence of informed consent or refusal is consistent with WAC [388-97-085](#) and [388-97-090](#); and

(e) Where appropriate, include evidence of resident's choice not to be informed as required in subsections (2) and (3) of this section.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-060, filed 2/24/00, effective 3/26/00; 94-19-041 (Order 3782), § 388-97-060, filed 9/15/94, effective 10/16/94.]

WAC 388-97-065 Advance directives. (1) "Advance directive" as used in this chapter means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney, health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

(2) The nursing home must carry out the provisions of this section in accordance with the applicable provisions of WAC [388-97-055](#) and [388-97-060](#), and with state law.

(3) The nursing home must:

(a) Document in the clinical record whether or not the resident has an advance directive;

(b) Not request or require the resident to have any advance directives and not condition the provision of care or otherwise discriminate against a resident on the basis of whether or not the resident has executed an advance directive;

(c) In a language and words the resident understands, inform the resident in writing and orally at the time of admission, and thereafter as necessary to ensure the resident's right to make informed choices, about:

(i) The right to make health care decisions, including the right to change his or her mind regarding previous decisions;

(ii) Nursing home policies and procedures concerning implementation of advance directives, including how the nursing home implements emergency responses; and

(d) Review and update as needed the resident advance directive information:

(i) At the resident's request;

(ii) When the resident's condition warrants review; and

(iii) When there is a significant change in the resident's condition.

(4) When the nursing home becomes aware that a resident's health care directive is in conflict with facility practices and policies which are consistent with state and federal law, the nursing home must:

(a) Inform the resident of the existence of any nursing home practice or policy which would preclude implementing the health care directive;

(b) Provide the resident with written policies and procedures that explain under what circumstances a resident's health care directive will or will not be implemented by the nursing home;

(c) Meet with the resident to discuss the conflict; and

(d) Determine, in light of the conflicting practice or policy, whether the resident chooses to remain at the nursing home:

(i) If the resident chooses to remain in the nursing home, develop with the resident a plan in accordance with chapter 70.122 RCW to implement the resident's wishes. The nursing home may need to actively participate in ensuring the execution of the plan, including moving the resident at the time of implementation to a care setting that will implement



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the resident's wishes. Attach the plan to the resident's directive in the resident's clinical record; or

(ii) If, after recognizing the conflict between the resident's wishes and nursing home practice or policy the resident chooses to seek other long-term care services, or another physician who will implement the directive, the nursing home must assist the resident in locating other appropriate services.

(5) If a terminally ill resident, in accordance with state law, wishes to die at home, the nursing home must:

(a) Use the informed consent process as described in WAC [388-97-060](#), and explain to the resident the risks associated with discharge; and

(b) Discharge the resident as soon as reasonably possible.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-065, filed 2/24/00, effective 3/26/00; 94-19-041 (Order 3782), § 388-97-065, filed 9/15/94, effective 10/16/94.]

WAC 388-97-07005 Notice of rights and services.

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under Medicare or Medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to Medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of the items, services and activities:

(i) That are included in nursing facility services under the Medicaid state plan and for which the resident may not be charged; and

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- (ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services;
  - (b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from Medicare or Medicaid eligible residents; and
  - (c) That minimum stay requirements cannot be imposed on Medicare or Medicaid eligible residents.
- (5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.
- (6) The private pay resident has the right to the following, regarding fee disclosure-deposits:
- (a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:
    - (i) Full disclosure in writing in a language the potential resident or his representative understands:
      - (A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and
      - (B) Of what portion of the deposits, admissions fees, prepaid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.
    - (ii) The amount of any admission fees, deposits, or minimum stay fees.
    - (iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.
  - (b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:
    - (i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that
    - (ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.
  - (c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and
  - (d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.
- (7) The nursing home must furnish a written description of legal rights which includes:
- (a) A description of the manner of protecting personal funds, under WAC [388-97-07015](#).
  - (b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the

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institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under Medicare or Medicaid, with the applicable federal requirements.

[Statutory Authority: RCW 18.51.070, 74.42.620. 02-14-063, § 388-97-07005, filed 6/27/02, effective 7/28/02; 00-06-028, § 388-97-07005, filed 2/24/00, effective 3/26/00.]  
WAC 388-97-07010 Notification of changes.

(1) A nursing home must immediately inform the resident, consult with the resident's physician, and if known, notify the resident's surrogate decision maker, and when appropriate, with resident consent, interested family member(s) when there is:

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

(b) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychological status in either life-threatening conditions or clinical complications); refer to WAC [388-97-055](#);

(c) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(d) A decision to transfer or discharge the resident from the facility.

(2) The nursing home must also promptly notify the resident and, if known, the resident's surrogate decision maker, and when appropriate, with the resident's consent, interested family member(s) when there is:

(a) A change in room or roommate assignment, refer to the timing requirements in WAC [388-97-07065](#); or

(b) A change in resident rights under federal or state law or regulations as specified in WAC [388-97-07005](#).

(3) The nursing home must record and periodically update the address and phone number

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of the resident's legal surrogate decision maker and interested family member(s).

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07010, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07015 Protection of resident funds.

(1) The resident has the right to manage his or her financial affairs and the nursing home may not require residents to deposit their personal funds with the nursing home.

(2) Upon written authorization of a resident, the nursing home must hold, safeguard, manage and account for the personal funds of the resident deposited with the nursing home.

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

(a) Deposit any resident's personal funds in excess of fifty dollars, one hundred dollars for Medicare residents, in an interest-bearing resident personal fund account or accounts, separate from any nursing home operating accounts, and credit all interest earned to the account;

(b) Keep personal funds under fifty dollars, one hundred dollars for Medicare residents, in a noninterest-bearing account or petty cash fund maintained for residents; and

(c) Make the individual financial record available to the resident or his or her surrogate decision maker through quarterly statements and on request.

(4) The nursing facility must notify each resident that receives Medicaid benefits:

(a) When the amount in the resident's account reaches two hundred dollars less than the SSI resource limit for one individual; and

(b) 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 individual, the resident may lose eligibility for Medicaid or SSI.

(5) The nursing home must convey the resident's funds, and a final accounting of those funds, to the individual or jurisdiction administering the resident's estate, within thirty days of the death of any resident with a personal fund deposited with the nursing home. For a Medicaid resident, the funds must be sent to the state of Washington, department of social and health services, office of financial recovery.

(6) The nursing facility must purchase a surety bond, or an approved alternative, to assure security of personal funds of residents deposited with the facility.

(7) Medicare certified and Medicaid certified facilities may not impose a charge against a resident's personal funds for any item or service for which payment is made under Medicaid or Medicare as described in 42 C.F.R. § 483.10 (c)(8).

(8) Medicare certified and Medicaid certified nursing facilities must:

(a) Not charge a resident (or the resident's representative) for any item or service not requested by the resident;

(b) Not require a resident, or the resident's representative, to request any item or service as a condition of admission or continued stay; and

(c) Inform the resident, or the resident's representative, requesting an item or services for which a charge will be made that there will be a charge for the item or service and what the charge will be.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07015, filed

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2/24/00, effective 3/26/00.]

WAC 388-97-07020 Privacy and confidentiality.

(1) The resident has the right to personal privacy and confidentiality of his or her personal and clinical records. Personal privacy includes:

- (a) Accommodations;
- (b) Medical treatment;
- (c) Written and telephone communications
- (d) Personal care;
- (e) Visits; and
- (f) Meetings with family and resident groups.

(2) The resident may approve or refuse the release of personal and clinical records to any individual outside the nursing home, unless the resident has been adjudged incapacitated according to state law.

(3) 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; or
- (b) Record release is required by law.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07020, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07025 Work. The resident has the right to:

- (1) Refuse to perform services for the nursing home; and
- (2) Perform services for the nursing home, 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 are voluntary or paid;
  - (c) Compensation for paid services is at or above prevailing rates; and
  - (d) The resident agrees to the work arrangement described in the plan of care.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07025, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07030 Self-administration of drugs. A resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07030, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07035 Grievance rights. A resident has the right to:

- (1) Voice grievances without discrimination or reprisal. Grievances include those with respect to treatment which has been furnished as well as that which has not been furnished.
- (2) Prompt efforts by the nursing home to resolve voiced grievances, including those with respect to the behavior of other residents.
- (3) File a complaint, contact, or provide information to the department, the long-term care ombudsman, the attorney general's office, and law enforcement agencies without interference, discrimination, or reprisal. All forms of retaliatory treatment are prohibited, including those listed in chapter 74.39A RCW.
- (4) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

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[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07035, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07040 Examination of survey results. (1) The resident has the right to examine the results of:

- (a) The most recent survey of the nursing home conducted by federal and state surveyors;
- (b) Surveys related to any current or subsequent complaint investigation; and
- (c) Any required accompanying plan of correction, completed or not.

(2) Upon receipt of any deficiency citation report, the nursing home must publicly post a notice:

(a) That the results of the survey or complaint investigation, or both, are available regardless of whether the plan of correction is completed or not;

(b) Of the location of the deficiency citation reports.

(3) For a report posted prior to the plan of correction being completed, the nursing home may attach an accompanying notice that explains the purpose and status of the plan of correction, informal dispute review, administrative hearing and other relevant information.

(4) Upon receipt of any citation report, the nursing home must publicly post a copy of the most recent full survey and all subsequent complaint investigation deficiency citation reports, including the completed plans of correction, when one is required.

(5) The notices and any survey reports must be available for viewing or examination in a place or places:

(a) Readily accessible to residents, which does not require staff interventions to access; and

(b) In plain view of the nursing home residents, including individuals visiting those residents, and individuals who inquire about placement in the nursing home.

[Statutory Authority: RCW 18.51.070, 74.42.620. 02-14-063, § 388-97-07040, filed 6/27/02, effective 7/28/02; 00-06-028, § 388-97-07040, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07045 Resident mail. The resident has the right to privacy in written communications, including the right to:

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage and writing implements at the resident's own expense.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07045, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07050 Access and visitation rights.

(1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For Medicare and Medicaid residents any representative of the U.S. Department of Health and Human Services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long term care ombudsman program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) Any representative of the Washington protection and advocacy system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of

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Rights Act);

(f) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home 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.

(3) The nursing home must allow representatives of the state ombudsman, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ombudsman may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate decision maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ombudsman pursuant to 42 U.S.C. § 3058g(b) and RCW 43.190.065.

[Statutory Authority: RCW 18.51.070, 74.42.620. 02-14-063, § 388-97-07050, filed 6/27/02, effective 7/28/02; 00-06-028, § 388-97-07050, filed 2/24/00, effective 3/26/00.]  
WAC 388-97-07055 Telephone. The resident has the right to have twenty-four hour access to a telephone which:

(1) Provides auditory privacy;

(2) Is accessible to an individual with a disability and accommodates an individual with sensory impairment; and

(3) Does not include the use of telephones in staff offices and at the nurses station(s).

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07055, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07060 Personal property.

(1) The resident has the right, unless to do so would infringe upon the rights or health and safety of other residents, to:

(a) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits; and

(b) Provide his or her own bed and other furniture, if desired and space permits; and

(c) Not be required to keep personal property locked in the facility office, safe, or similar arrangement.

(2) The nursing home must:

(a) Not request or require residents to sign waivers of potential liability for losses of personal property; and

(b) Have a system in place to safeguard personal property within the nursing home that protects the personal property and yet allows the resident to use his or her property.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07060, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07065 Roommates/rooms.

(1) A resident has the right to:

(a) Share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement; and

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(b) Receive three days notice of change in room or roommate except:

- (i) For room changes: The move is at the resident's request; and
  - (ii) For room or roommate changes: A longer or shorter notice is required to protect the health or safety of the resident or another resident; or an admission to the facility is necessary, and the resident is informed in advance. The nursing home must recognize that the change may be traumatic for the resident and take steps to lessen the trauma.
- (2) The nursing home must make reasonable efforts to accommodate residents wanting to share the same room.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07065, filed 2/24/00, effective 3/26/00.]

WAC 388-97-07070 Refusal of certain transfers. In dually certified facilities all beds are Medicaid certified. Therefore the beds in a certified distinct part for Medicare are also nursing facility beds for Medicaid.

(1) Each resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate:

- (a) A resident from the Medicare distinct part of the facility to a part of the facility that is not a Medicare distinct part; or
- (b) A resident from the part of the facility that is not a Medicare distinct part to the Medicare distinct part of the facility.

(2) A resident's exercise of the right to refuse transfer under subsection (1)(a) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.

(3) The skilled nursing facility or nursing facility must inform residents of their rights under subsection (1) and (2) of this section at the time of the proposed transfer or relocation.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-07070, filed 2/24/00, effective 3/26/00.]

WAC 388-97-075 Chemical and physical restraints. (1) The resident has the right to be free from any physical or chemical restraint imposed for purposes of:

- (a) Discipline or convenience, and not required to treat the resident's medical symptoms; or
- (b) Preventing or limiting independent mobility or activity.

(2) The nursing home must develop and implement written policies and procedures governing:

- (a) The emergency use of restraints;
- (b) The use of chemical and physical restraints, required for the treatment of the resident's medical symptoms, not for discipline or convenience;
- (c) The personnel authorized to administer restraints in an emergency; and
- (d) Monitoring and controlling the use of restraints.

(3) Physical restraints may be used in an emergency only when:

- (a) It has been assessed as necessary to prevent a resident from inflicting injury to self or to others;
- (b) The restraint is the least restrictive form of restraint possible;
- (c) A physician's order is obtained:
  - (i) Within twenty-four hours; and
  - (ii) The order includes treatments to assist in resolving the emergency situation and



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eliminating the need for the restraint; and

(b) The resident is released from the restraint as soon as the emergency no longer exists.

(4) In certain situations, chemical or physical restraints may be necessary for residents with acute or chronic mental or physical impairments. When chemical or physical restraints are used the nursing home must ensure that:

(a) The use of the restraint is related to a specific medical need or problem identified through a multidisciplinary assessment;

(b) The informed consent process is followed as described under WAC [388-97-060](#); and

(c) The resident's plan of care provides approaches to reduce or eliminate the use of the restraint, where possible.

(5) The nursing home must ensure that any resident physically restrained is released:

(a) At intervals not to exceed two hours; and

(b) For periods long enough to provide for ambulation, exercise, elimination, food and fluid intake, and socialization as independently as possible.

[Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-075, filed 2/24/00, effective 3/26/00; 94-19-041 (Order 3782), § 388-97-075, filed 9/15/94, effective 10/16/94.]

WAC 388-97-076 Prevention of abuse.

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

2) The nursing home must develop and implement written policies and procedures that:

(a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and

(b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for skilled nursing facilities and nursing facilities as required by 42 C.F.R. § 483.13.

(3) The nursing home must not allow staff to:

(a) Engage in verbal, mental, sexual, or physical abuse;

(b) Use corporal punishment;

(c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or

(d) Misappropriate resident property.

(4) The nursing home must report any information it has about an action taken by a court of law against an employee to the department's complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

(5) The nursing home must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:

a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and

(b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

(6) The nursing home must:

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- (a) Have evidence that all alleged violations are thoroughly investigated;
- (b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and
- (c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

(7) When a mandated reporter has:

- (a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident's property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department's aging and disability services administration ADSA;
- (b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the individual mandatory reporter must:

- (i) Immediately report the incident to the department's aging and disability services administration (ADSA);

- (ii) Notify local law enforcement in accordance with the provisions of chapter 74.34 RCW.

(8) Under RCW 74.34.053, it is:

- (a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and
- (b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC [388-97-203](#).

[Statutory Authority: RCW 74.34.165, 74.34.020, 74.34.035, 2003 c 230. 03-23-021, § 388-97-076, filed 11/10/03, effective 12/11/03. Statutory Authority: RCW 18.51.070, 74.42.620. 02-14-063, § 388-97-076, filed 6/27/02, effective 7/28/02; 00-06-028, § 388-97-076, filed 2/24/00, effective 3/26/00.]

WAC 388-97-077 Resident protection program.

(1) As used in this section, the term "individual," means any individual, including a volunteer, used by the facility to provide services to residents.

(2) The department will review all allegations of resident abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, as defined in this chapter and RCW 74.34.020.

(3) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abused or neglected a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(4) The department's investigation may include, but is not limited to:

- (a) The review of facility and state agency records;
- (b) Interviews with any individuals who may have relevant information about the allegation; and
- (c) The collection of any evidence deemed necessary by the investigator.

(5) If, after review of the results of the investigation, the department makes a preliminary

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determination that the resident abuse, neglect, or misappropriation of resident funds has occurred, the department will make a preliminary finding to that effect; except that a preliminary finding of neglect will not be made if the individual is able to demonstrate, that the neglect was caused by factors beyond the control of the individual.

(6) Within ten days of making its preliminary determination, the department must send notice of a preliminary finding:

(a) To the individual by first class and certified mail, return receipt requested. The department may choose to substitute personal service for certified mail;

(b) To the current administrator of the facility where the incident occurred; and

(c) To the appropriate licensing agency.

(7) The notice will include the following information:

(a) A description of the allegation;

(b) The date and time of the incident, if known;

(c) That the individual may appeal the preliminary finding; and

(d) That the preliminary finding will become final unless the individual makes a written request for a hearing within thirty days of the date of the notice.

(8) The individual may appeal the department's preliminary finding of abuse, neglect or misappropriation of resident property by notifying the office of administrative hearings in writing within thirty days of the date of the notice.

(9) If, within one hundred eighty days of the date of the notice of the preliminary finding, an individual requests a hearing and can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearing may grant the request. The individual's name will remain on the nursing assistant registry pending the outcome of the hearing.

(10) Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(a) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request;

(b) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(c) The hearing, and any subsequent appeals, shall be governed by this chapter, chapter 34.05 RCW, and chapter 388-08 WAC, or its successor regulations;

(d) A continuance may be granted upon the request of any party for good cause, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal. Neither the department nor the individual can waive the one hundred twenty-day requirement. If, however, the administrative law judge finds that extenuating circumstances exist that will make it impossible to complete the record within one hundred twenty days, the administrative law judge may extend the one hundred twenty-day requirement a maximum of sixty days; and

(e) If the administrative law judge upholds the department's preliminary finding, it becomes final.

(11) The department will report a final finding of abuse, neglect and misappropriation of resident property within ten working days to the following:

(a) The individual;

(b) The current administrator of the facility in which the incident occurred;

- (c) The administrator of the facility that currently employs the individual;
  - (d) The department's nursing assistant registry; and
  - (e) The appropriate licensing authority.
- (12) The individual against whom a finding is made is entitled to submit a statement disputing the allegations. Information about the finding, including the individual's statement, must be made available to all requesters.
- (13) The findings will remain on the department's nursing assistant registry permanently unless:
- (a) The finding is set aside by further administrative or judicial review as provided for in chapter 34.05 RCW;
  - (b) The department determines that the finding was made in error;
  - (c) The department removed a single finding of neglect from the nursing assistant registry based upon a petition by the individual as provided in 42 U.S.C. 1396r (g)(1)(C); or
  - (d) The department is notified of the individual's death.
- (14) Information obtained during the investigation into allegations of abuse, neglect and misappropriation of property, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.
- [Statutory Authority: RCW 18.51.070 and 74.42.620. 00-06-028, § 388-97-077, filed 2/24/00, effective 3/26/00.]

### **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

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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.

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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.

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- 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.

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- 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.



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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;

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- 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.
- 4.12. Bed-Hold and Readmission Rights.
  - 4.12.a. Upon payment of the nursing home's bed-hold rate or in the case of Medicaid residents, in accordance with the policy and procedure currently prescribed by the State plan, a resident has the right to retain the bed in which he or she is a resident. The nursing home shall notify a resident in writing at the time of admission and hospitalization or leave of absence, of the bed-hold policy.
  - 4.12.b. After a hospitalization or a leave of absence for which there was no bed-hold, a former resident has the right to be re-admitted to the first available bed in a semi-private room in the nursing home from which he or she came, if the resident requires the services provided by the nursing home.
    - 4.12.b.1. If a former resident wishes to return to the nursing home and meets the requirements for coverage under the Medicare program, the resident may be placed in a bed certified to participate in that program.
    - 4.12.b.2. If the nursing home is not certified under the Medicare program and the resident chooses placement in a nursing home providing Medicare coverage, the resident may be placed on a waiting list for readmission to the nursing home after Medicare coverage has ceased if the nursing home can provide the necessary services to the former resident.
- 4.13. Admission, Transfer and Discharge.
  - 4.13.a. Refusal of Certain Transfers. A resident has the right to refuse a transfer to another room within the nursing home if the purpose of the transfer is to relocate:
    - 4.13.a.1. A resident of a Medicare certified skilled nursing home (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF; or
    - 4.13.a.2. A resident of a non-Medicare certified nursing home (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.
  - 4.13.b. Transfer and discharge requirements. The nursing home shall permit each resident to remain in the nursing home, unless:
    - 4.13.b.1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;
    - 4.13.b.2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home;
    - 4.13.b.3. The health or safety of persons in the nursing home is endangered;
    - 4.13.b.4. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home; or
    - 4.13.b.5. The nursing home ceases to operate.
  - 4.13.c. Documentation.
    - 4.13.c.1. When a nursing home transfers or discharges a resident, the resident's clinical record shall contain the reason for the transfer or discharge.

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- 4.13.c.2. The documentation shall be made by the resident's physician when transfer or discharge is necessary under paragraphs 4.13.b.1 through 4.13.b.3 of this Subsection.
- 4.13.d. Notice before transfer or discharge. Before a nursing home transfers or discharges a resident, it shall:
- 4.13.d.1. Provide written notice to the resident or his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include the following:
- 4.13.d.1.A. The reason for the proposed transfer or discharge;
- 4.13.d.1.B. The effective date of the proposed transfer or discharge;
- 4.13.d.1.C. The location or other nursing home to which the resident is being transferred or discharged;
- 4.13.d.1.D. A statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so;
- 4.13.d.1.E. The name, address and telephone number of the State long term care ombudsman;
- 4.13.d.1.F. For nursing home residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled persons; and
- 4.13.d.1.G. For nursing home residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill persons.
- 4.13.e. Time of notice. The notice of transfer or discharge shall be made by the nursing home at least thirty (30) days before the resident is discharge or transferred, except the notice shall be made as soon as practicable before a transfer or discharge when:
- 4.13.e.1. The discharge is to a community setting in accordance with Subdivision 4.13.g. of this Subsection.;
- 4.13.e.2. The safety of persons in the nursing home would be endangered;
- 4.13.e.3. The health of persons in the nursing home would be endangered;
- 4.13.e.4. The resident's health improves sufficiently to allow a more immediate transfer or discharge;
- 4.13.e.5. An immediate transfer or discharge is required by the resident's urgent medical needs; or
- 4.13.e.6. A resident has not resided in the nursing home for thirty (30) days.
- 4.13.f. Orientation for Transfer or Discharge.
- 4.13.f.1. A nursing home shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing home.
- 4.13.f.2. Involuntary Transfer. In the event of an involuntary transfer, the nursing home shall assist the resident or legal representative or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident.
- 4.13.f.2.A. The plan may include counseling the resident, or legal representative or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.
- 4.13.g. Discharge to a Community Setting.
- 4.13.g.1. A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will.

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4.13.g.2. A nursing home shall document that a resident who was voluntarily discharged to a community setting fully understood all options for care and helped develop a plan of care in anticipation of the resident's discharge.

4.13.g.3. Each resident shall understand fully the right to refuse a discharge.

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.

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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;

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- 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.

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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.'

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Resident Rights:

Subchapter III — Residents' Rights and Protections

HFS 132.31 Rights of residents.

(1) RESIDENTS' RIGHTS. Every resident shall, except as provided in sub. (3), have the right to:

(a) Communications. Have private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

1. Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.

2. Use a telephone for private communications.

3. Have private visits, pursuant to a reasonable written visitation policy.

(b) Grievances. Present grievances on one's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and join with other residents or individuals within or outside of the facility to work for improvements in resident care.

(c) Finances. Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

1. A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorizes this action in writing. The facility shall obtain separate authorizations for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence;

2. Any resident funds held or controlled by the facility, and any earnings from them, shall be credited to the resident and may not be commingled with other funds or property except that of other residents;

3. The facility shall furnish a resident, the resident's guardian, or a representative designated by the resident with at least a quarterly statement of all funds and property held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge. If the resident has authorized discretionary expenditures by the facility and the facility has accepted responsibility for these expenditures, upon written request of the resident, the resident's guardian or a designated representative of the resident, the facility shall issue this statement monthly; and

4. The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.



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(d) Admission information. Be fully informed in writing, prior to or at the time of admission, of all services and the charges for these services, and be informed in writing, during the resident's stay, of any changes in services available or in charges for services, as follows:

1. No person may be admitted to a facility without that person or that person's guardian or any other responsible person designated in writing by the resident signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short term care, the information required under s. HFS 132.70 (3):
  - a. An accurate description of the basic services provided by the facility, the rate charged for those services, and the method of payment for them;
  - b. Information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;
  - c. The method for notifying residents of a change in rates or fees;
  - d. Terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge;
  - e. Terms of holding and charging for a bed during a resident's temporary absence;
  - f. Conditions for involuntary discharge or transfer, including transfers within the facility;
  - g. Information about the availability of storage space for personal effects; and
  - h. A summary of residents' rights recognized and protected by this section and all facility policies and regulations governing resident conduct and responsibilities.

2. No statement of admission information may be in conflict with any part of this chapter.

(e) Treatment. Be treated with courtesy, respect, and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified, and registered providers of health care and pharmacists with whom the resident comes in contact.

(f) Privacy. Have physical and emotional privacy in treatment, living arrangements, and in caring for personal needs, including, but not limited to:

1. Privacy for visits by spouse. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contraindicated as documented by the resident's physician in the resident's medical record.

Note: See s. HFS 132.84 (1) (a).

2. Privacy concerning health care. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

3. Confidentiality of health and personal records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or third-party payment contracts.

(g) Work. Not be required to perform work for the facility, but may work for the facility if:

1. The work is included for therapeutic purposes in the resident's plan of care; and
2. The work is ordered by the resident's physician and does not threaten the health, safety, or welfare of the resident or others.

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(h) Outside activities. Meet with and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contraindicated as documented by the resident's physician in the resident's medical record.

(i) Personal possessions. Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.

(j) Transfer or discharge. Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

Note: See s. HFS 132.53.

(k) Abuse and restraints. 1. Be free from mental and physical abuse, and be free from chemical and physical restraints except when required to treat the resident's medical symptoms and as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record.

2. Notwithstanding the limitation in subd. 1. for using restraints only to treat a resident's medical symptoms, physical restraints may be used in an emergency when necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that written authorization for continued use of the physical restraints is obtained from the physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical record. In this paragraph, "physical restraint" means any manual method, article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but does not include a mechanical support as defined under s. HFS 132.60 (6) (a) 2.

Note: See ss. HFS 132.33, 132.43, and 132.60 (6).

(L) Care. Receive adequate and appropriate care within the capacity of the facility.

(m) Choice of provider. Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice.

(n) Care planning. Be fully informed of one's treatment and care and participate in the planning of that treatment and care.

(o) Religious activity. Participate in religious activities and services, and meet privately with clergy.

(p) Nondiscriminatory treatment. Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

1. No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment, except that a facility only part of which is certified for Medicare reimbursement under 42 USC 1395 is not prohibited from assigning a resident to the certified part of the facility because the source of payment for the resident's care is Medicare.

2. Facilities shall offer and provide an identical package of basic services meeting the requirements of this chapter to all individuals regardless of the sources of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, or

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enhancements of individual components of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. A facility which elects to offer enhancements to basic services to its residents must provide all residents with a detailed explanation of enhanced services and the additional charges for these services pursuant to par. (d) 1. b.

3. If a facility offers at extra charge additional services which are not covered by the medical assistance program under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

4. No facility may require, offer or provide an identification tag for a resident or any other item which discloses the source from which the facility's charges for that resident's care are paid.

(2) INCOMPETENCE. If the resident is found incompetent by a court under ch. 880, Stats., and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian.

(3) CORRECTIONS CLIENTS. Rights established under this section do not, except as determined by the department, apply to residents in a facility who are in the legal custody of the department for correctional purposes.

(4) NOTIFICATION. (a) Serving notice. Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

(b) Amendments. All amendments to the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident or guardian, if any, or any other responsible person designated in writing by the resident, at the time the amendment is put into effect. The facility shall provide the resident or guardian, if any, or any other responsible person designated in writing by the resident and each member of the facility's staff with a copy of all amendments.

(c) Posting. Copies of the residents' rights provided under this chapter and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

(5) ENCOURAGEMENT AND ASSISTANCE. Each facility shall encourage and assist residents to exercise their rights as residents and citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section.

(6) COMPLAINTS. (a) Filing complaints. Any person may file a complaint with a licensee or the department regarding the operation of a facility. Complaints may be made orally or in writing.

(b) Reviewing complaints. Each facility shall establish a system of reviewing complaints and allegations of violations of residents' rights established under this section. The

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facility shall designate a specific individual who, for the purpose of effectuating this section, shall report to the administrator.

(c) Reporting complaints. Allegations that residents' rights have been violated by persons licensed, certified or registered under chs. 441, 446 to 450, 455, and 456, Stats., shall be promptly reported by the facility to the appropriate licensing or examining board and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered under chs. 441, 446 to 450, 455 or 456, Stats., may also report such allegations to the board.

(d) Liability. No person who files a report as required in par.

(c) or who participates, in good faith, in the review system established under par.

(b) shall be liable for civil damages for such acts, in accordance with s. 50.09 (6)

(c), Stats.

(e) Summary of complaints. The facility shall attach a statement which summarizes complaints or allegations of violations of rights established under this section to an application for a license. The statement shall contain the date of the complaint or allegation, the names of the persons involved, the disposition of the matter, and the date of disposition. The department shall consider the statement in reviewing the application.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; r. and recr. (1) (c), (d), (j), (m),

(2) to (4), renun. (5) to (6), cr. (1) (p) and (5), Register, January, 1987, No. 373, eff.

2-1-87; am. (1) (d) 1. intro., (k) and (4) (b), Register, February, 1989, No. 398, eff.

3-1-89; am. (6) (e), Register, August, 2000, No. 536, eff. 9-1-00; CR 04-053: am. (1)

(k) Register October 2004 No. 586, eff. 11-1-04.

HFS 132.32 Community organization access.

(1) ACCESS. (a) In this section, "access" means the right to:

1. Enter any facility;

2. Seek a resident's agreement to communicate privately and without restriction with the resident;

3. Communicate privately and without restriction with any resident who does not object to communication; and

4. Inspect the health care and other records of a resident under ss. 146.81 through 146.83, Stats. Access does not include the right to examine the business records of the facility without the consent of the administrator or designee.

(b) Any employee, agent, or designated representative of a community legal services program or community service organization who meets the requirements of sub. (2) shall be permitted access to any facility whenever visitors are permitted by the written visitation policy referred to in s. HFS 132.31 (1) (a) 3., but not before 8:00 a.m., or after 9:00 p.m.

(2) CONDITIONS. (a) The employee, agent, or designated representative shall, upon request of the facility's administrator or administrator's designee, present valid and current identification signed by the principal officer of the agency, program, or organization represented, and evidence of compliance with par. (b).

(b) Access shall be granted for visits which are consistent with an express purpose of an organization which is currently registered with the state board on aging and long term care or purpose of which is to:

1. Visit, talk with, or offer personal, social, and legal services to any resident, or obtain information from the resident about the facility and its operations;

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2. Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents;
3. Assist any resident in asserting legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which a resident may be aggrieved; or
4. Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; CR 04-053: am. (1) (b) Register October 2004 No. 586, eff. 11-1-04.

HFS 132.33 Housing residents in locked units.

(1) DEFINITIONS. As used in this section:

- (a) "Locked unit" means a ward, wing or room which is designated as a protective environment and is secured in a manner that prevents a resident from leaving the unit at will. A physical restraint applied to the body is not a locked unit. A facility locked for purposes of security is not a locked unit, provided that residents may exit at will.
- (b) "Consent" means a written, signed request given without duress by a resident capable of understanding the nature of the locked unit, the circumstances of one's condition, and the meaning of the consent to be given.

(2) RESTRICTION. Except as otherwise provided by this section, no resident may be housed in a locked unit. Physical or chemical restraints or repeated use of emergency restraint under sub. (5) may not be used to circumvent this restriction. Placement in a locked unit shall be based on the determination that this placement is the least restrictive environment consistent with the needs of the person.

Note: For requirements relating to the use of physical and chemical restraints, including locked rooms, see s. HFS 132.60 (6).

(3) PLACEMENT. (a) A resident may be housed in a locked unit under any one of the following conditions:

1. The resident consents under sub. (4) to being housed on a locked unit;
2. The court that protectively placed the resident under s. 55.06, Stats., made a specific finding of the need for a locked unit;
3. The resident has been transferred to a locked unit pursuant to s. 55.06 (9) (c), Stats., and the medical record contains documentation of the notice provided to the guardian, the court and the agency designated under s. 55.02, Stats.; or
4. In an emergency governed by sub. (5).

(b) A facility may transfer a resident from a locked unit to an unlocked unit without court approval pursuant to s. 55.06 (9) (b), Stats., if it determines that the needs of the resident can be met on an unlocked unit. Notice of the transfer shall be provided as required under s. 55.06 (9) (b), Stats., and shall be documented in the resident's medical record.

(4) CONSENT. (a) A resident may give consent to reside in a locked unit.

(b) The consent of par. (a) shall be effective only for 90 days from the date of the consent, unless revoked pursuant to par. (c). Consent may be renewed for 90-day periods pursuant to this subsection.

(c) The consent of par. (a) may be revoked by the resident at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

(5) EMERGENCIES. In an emergency, a resident may be confined in a locked unit if necessary to protect the resident or others from injury or to protect property, provided the facility immediately attempts to notify the physician for instructions. A physician's order for the confinement must be obtained within 12 hours. No resident may be confined for more than an additional 72 hours under order of the physician.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; am. (1) (a) and (2), r. and recr. (3), Register, January, 1987, No. 373, eff. 2-1-87.

## Wyoming

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### Chapter I

#### PATIENT BILL OF RIGHTS: ADMINISTRATIVE POLICIES AND PROCEDURES

##### Section 1. Authority.

The Board of Charities and Reform, Pursuant to W.S. 25-10-120, is authorized to promulgate rules creating a Patients' Bill of Rights and establishing the procedures by which such rights shall be enforced, limited or denied.

##### Section 2. Purpose.

(a) These rules are adopted to create a Patients' Bill of Rights and establish the administrative procedures whereby patients' rights shall be enforced, limited or denied.

(i) The creation of a Patients' Bill of Rights acknowledges the importance of recognizing and preserving the rights and dignity of individuals served by the State Hospital while providing the most effective treatment possible, with the goal of advancing each patient's welfare and health.

(ii) The guidelines, procedures and criteria contained in these rules are intended to facilitate the provision of care and services by providing official guidelines to hospital staff and employees, and all others involved in the provision and administration of such care and services.

##### Section 3. Definitions.

(a) "Head of hospital" means the individual in charge of the State Hospital;

(b) "Hospital" means the Wyoming State Hospital at Evanston, Wyoming;

(c) "Mental Health Professional" means:

(i) A psychiatrist with three years of residency training in psychiatry;

(ii) A psychologist with a doctoral degree from an accredited program;

(iv) A social worker with a master's degree from an accredited program and two years of clinical experience under the supervision of a qualified mental health professional;

(iv) A registered nurse with a graduate degree in psychiatric nursing and two years of clinical experience under the supervision of a qualified mental health professional.

(d) "Minor" or "minor person" means a person who has not attained the age of nineteen.

(e) "State" means the State of Wyoming, and any of its political subdivisions.

(f) "Treatment" means diagnosis, evaluation, medication, therapy or prescribed care including observation, supervision or discharge planning.

##### Section 4. Patients' Bill of Rights.

(a) A person admitted to the hospital for the purposes of receiving mental health services shall be accorded the following:

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(i) The right to appropriate treatment and related services in a setting and under conditions that:

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(A) Are most supportive of the person's personal liberty; and Patient Bill of Rights Page Administrative Policies and Procedures 29 Jun 90

(B) Restrict such liberty only to the extent necessarily consistent with the person's treatment needs, applicable requirements of law, and applicable judicial orders.

(ii) The right to an individualized, written treatment or service plan developed pursuant to and in compliance with W.S. 25-10-113, including:

(A) The right to treatment based on such plan;

(B) The right to periodic review and reassessment of treatment and related service needs as required by W.S. 25-10-116; and

(C) The right to appropriate revision of the plan. Appropriate revision includes any revision necessary to provide a description of mental health services that may be needed after the person is discharged from the hospital or its program(s).

(iii) The right to ongoing participation, in a manner appropriate to the person's capabilities, in the planning of mental health services to be provided the person. This right of participation includes the right to participate in the development and periodic revision of the plan described in subsection (ii).

(A) In connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to a person's condition and ability to understand, of:

(I) The person's general mental condition and, if the program or the hospital has provided a physical examination, the person's general physical condition.

(II) The objectives of treatment:

(III) The nature, duration, and significance of possible adverse effects of recommended treatments.

(IV) The reasons why a particular treatment is considered appropriate.

(V) Any appropriate and available alternative treatments, services, and types of providers of mental health services, including the right of the patient to seek an opinion of an outside mental health professional (at the patient's own expense).

(iv) The right not to receive a mode or course of treatment established pursuant to the treatment plan, in the absence of the person's informed, voluntary, written consent to such mode or course of treatment, except treatment:

(A) During an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(B) As permitted under applicable law in the case of a person committed by a court to the hospital or its treatment program(s).

(v) The right not to participate in experimentation in the absence of the person's informed, voluntary, written consent.

(A) The right to appropriate protections in connection with such participation.

Appropriate protections include the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks.

(B) The right and opportunity to revoke consent to such participation.

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(vi) The right to freedom from restraint, seclusion, or other similar interventions which may be administered solely for purposes of discipline, staff convenience, or as a substitute for a less restrictive therapeutic treatment program.

(A) In the event of an emergency situation, in which it is likely that patients could harm themselves or others, and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a qualified mental health professional's written order which explains the rationale for such action.

(B) Restraint or seclusion during an emergency situation shall not be ordered by a medical doctor who is also not a qualified mental health professional.

(vii) The right to humane treatment environment that affords a person reasonable protection from harm and appropriate privacy with regard to personal needs.

(A) A humane treatment environment includes the right to be free from any physical, verbal, sexual, financial, or psychological abuse, exploitation, or punishment.

(B) Personal privacy and dignity shall be protected.

(viii) The right to confidentiality of the person's records, in accordance with W.S. 25-10-122.

(ix) The right to access, upon request, to the person's own mental health care records, except the person may be refused access to:

(A) Information in the records provided by a third party under assurance that such information will remain confidential; and

(B) Specific material in the records if the mental health professional responsible for the mental health services concerned has made a determination in writing that access would be detrimental to the person's health. However, such material may be made available to a similarly licensed health professional selected by the person, and the health professional selected may, in the exercise of professional judgment, provide the person with access to any or all parts of the specific material or otherwise disclose the information contained in the material to the person.

(x) The right, in the case of a person admitted on a residential or inpatient care basis:

(A) To converse with others privately;

(B) To have convenient and reasonable access to the telephone and to send and receive uncensored and unopened mail; and

(C) To see visitors during regularly scheduled hours.

(I) However, if a mental health professional treating the person determines that denial of access to a particular person is necessary for treatment purposes, the mental health professional may, for a specific, limited, and reasonable period of time, deny access if the mental health professional has ordered the denial in writing and the order has been incorporated in the treatment plan for the person. A order denying access shall include the reasons for denial.

(II) Any denial of access to a particular person shall be reviewed by a qualified mental health professional at regular intervals not to exceed seven (7) days.

(xi) Right of access to:

(A) A protection service within the hospital through the Human Rights Committee;

(B) A protection system established by the State of Wyoming through the state patient advocate;

(C) The system established under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. SS 10801 et seq.), to protect and advocate the rights



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of mentally ill individuals. This right of access includes opportunities and facilities for private communication.

(xii) The right to be informed promptly at the time of admission and periodically thereafter, of the right described in this section.

(A) Such information shall be in language and terms appropriate to the person's condition and ability to understand.

(B) Such information shall include patient's right under the Fair Labor Standards Act, 42 U.S.C. SS 201 et seq., which includes:

(I) The right to refuse to perform services for the hospital;

(II) The right to have the need or desire to work documented in the patient's individual treatment plan in the event the patient chooses to perform services;

(III) The individual treatment plan shall specify the nature of the services and whether the services are voluntary or performed for compensation;

(IV) The agreement to perform services may be terminated at any time.

(xiii) The right to assert grievances with respect to infringement of the rights described in these rules, including the right to have such grievances considered in a fair, timely and impartial grievance procedure provided for by the hospital, in accordance with Section 5(a)(iii) of these rules.

(xiv) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(xv) The right to referral, as appropriate, to other providers of mental health services upon discharge.

(b) The rights described in these rules shall be in addition to and not in derogation of any other statutory or constitutional rights.

(i) The right to confidentiality of and access to records described in provisions designated (a)(viii) and (a)(ix) shall remain applicable to records pertaining to a person after the person's discharge from the hospital or program(s), with the following exception:

Records and reports which are made under the Hospitalization of Mentally Ill Persons Act (W.S. 25-10-101 through 25-10-404), and directly or indirectly identify a patient, former patient, or person for whom an application for hospitalization has been filed, may be provided without the person's consent, if the records and reports as provided:

(A) By and between a mental health center, the State Hospital and hospitals designated under W.S. 25-10-104; and

(B) Only for the purpose of facilitating referral treatment, admission, readmission or transfer of the patient under the Hospitalization of Mentally Ill Persons Act.

(c) No otherwise eligible person will be denied admission to the hospital or its program(s) for mental health services as a reprisal for the exercise of the rights described in these rules.

(i) Nothing in these rules shall:

(A) Obligate an individual mental health or health professional to administer treatment contrary to the professional's clinical judgment;

(B) Prevent the hospital or any of its programs from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for the person's treatment, is or has become impossible as a result of the persons' refusal to consent to the treatment.

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(C) Require the hospital or any of its programs to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of admission by withholding consent to proposed treatment; or

(D) Obligate the hospital or any of its programs to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(ii) In order to assist a person admitted to a program or facility in the exercise or protection of the person's rights, the person's attorney or legal representative shall have reasonable access to:

(A) The person;

(B) The areas of the hospital or its program(s) where such person has received treatment, resided, or had access; and

(C) Pursuant to the written authorization of the person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (a)(ix).

(iii) The hospital and each of its programs shall post a notice listing and describing the rights described in this section of all persons admitted to the hospital or any of its program.

(A) The notice shall be in language and terms appropriate to the ability of the persons to whom the notice is addressed to understand.

(B) Each notice should conform to the format and content for such notices, and shall be posted in appropriate locations.

(d) When a person is adjudicated by a court of competent jurisdiction as being incompetent to exercise the rights or provide the authorization described in paragraphs (i), (ii) or (iii) of this subsection, such rights may be exercised or such authorization provided by the individual appointed by the court as the person's guardian for the purpose of:

(i) Exercising the right to consent to treatment or experimentation described in the provisions designated as (a)(iv) and (a)(v) of this section;

(ii) Exercising the right to confidentiality of or access to records described in provisions designated as (a)(viii) or (a)(ix) of this section;

(iii) Providing authorization as described in subparagraph (c)(ii)(C) of this section; or

(iv) Avoiding conflicts of interest.

(e) The following shall apply with respect to minors:

(i) A minor's parent or legal guardian may, on behalf of the minor:

(A) Exercise the right to consent to treatment to experimentation described in the provisions designated as (a)(iv) and (a)(v) of this section;

(B) Exercise the right to confidentiality of or access to records described in provisions designated as (a)(viii) or (a)(ix) of this section; or

(C) Provide authorization as described in the provision designated as (c)(ii)(C) of this section.

(ii) Notwithstanding provision (e)(i) above, a minor, and not the minor's parent or legal guardian, may exercise the rights contained in these rules and provide any necessary authorization to exercise the rights, in the following cases:

(A) The minor's parent or legal guardian cannot with reasonable diligence be located and the minor's need for treatment is sufficiently urgent to require immediate attention;

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(B) The minor was living apart from the parent or guardian and managing his own affairs regardless of his source of income, at the time of admission or commitment;

(C) The minor is or was legally married;

(D) The minor is in the active military service of the United States;

(E) The minor is emancipated under W.S. 14-1-201 through 14-1-206. Section 5.

Administrative Policies and Procedures.

(a) In addition to any policies and procedures required by the Patients' Bill of Rights contained in section 4 of these rules, the hospital shall establish appropriate policies and procedures as required to implement and enforce these rules. Appropriate policies and procedures required to implement and enforce these rules include but are not limited to the following:

(i) Affirm and protect the patient's right stated under Section 4, to include:

(A) Ensure that all allegations of mistreatment, abuse or neglect, as well as any injuries to patients, are reported immediately to the administrator or to other officials in accordance with State law and through established hospital standard reporting procedures;

(B) Ensure that action is taken as necessary to prevent the potential of further abuse while an investigation is in process;

(C) Provide for an immediate and thorough investigation of all allegations by trained, experienced personnel delegated with all necessary authority; results of all investigations must be reported to the administrator or designated representative, or to other officials in accordance with state law, within five working days of the incident;

(D) Establish reasonable and appropriate corrective actions, including education, training and/or punishment for any hospital-affiliated individual who has been found to be responsible for acts of mistreatment, abuse or neglect of patients;

(E) Prohibit the employment of individuals with a conviction or substantial documentation of child or patient abuse, neglect or mistreatment;

(F) Provide training and informational materials on patients' rights and on the prevention of abuse/neglect/mistreatment for administrators, mental health professionals and direct care staff and volunteers; each new staff member should be presented this information at the time of employment and training should be given for each of the groups at least annually.

(ii) The hospital shall designate and staff an administrative function charged with the following responsibilities:

(A) An assessment and report, to be submitted to the head of the hospital and the hospital's governing body on at least an annual basis, of the hospital's compliance or lack thereof with the requirements in these rules, and any applicable statutory, constitutional and accreditation standards.

(B) Establishment and implementation of procedure(s) which provide every person admitted to the hospital or any of its programs with adequate notice of the rights contained in these rules.

(C) To act in the capacity of liaison for the hospital and its programs to the services and systems enumerated in provision 4(a)(xiii) of these rules.

(iii) The hospital shall develop and implement an administrative procedure for the review of patient grievances with respect to the protection and enforcement of patients' rights, in compliance with provision 4(a)(xiii) of the Patients' Bill of Rights. This procedure shall include, but is not limited to the following elements:

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**PATIENT GRIEVANCE PROCEDURE**

A formal procedure to assist patient's with problems or complaints will be provided to the patient.

1. The complaint or grievance may be verbal or written and may be registered with the hospital designated patient representative or with the state designated patient advocate or with any external advocate the patient chooses.
2. The complaint may be registered at any time.
3. The names, addresses and telephone numbers of the hospital patient representative, the state patient advocate, and external advocacy organizations will be posted and/or otherwise made available to all patients.
4. Access to external advocacy organizations will include contact information about:
  - a) Protection and Advocacy, Inc.;
  - b) Private attorneys;
  - c) Legal services;
  - d) Other mental health, legal and family consumer organizations; and
  - e) The Chairman of the Wyoming State Mental Health Grievance Committee.
5. If the patient chooses to file a formal grievance with the hospital, patient representative and/or with the state patient advocate:
  - a) A response to the initial complaint will be made within twenty-four (24) hours, exclusive of weekends and holidays.
  - b) The state patient advocate, the Human Rights Committee of the Wyoming State Hospital, and the head of the Wyoming State Hospital will work to resolve the grievance with the patient.
  - c) If unresolved, the state patient advocate will present the patient's grievance to the Wyoming State Mental Health Grievance Committee for resolution.

**Federal Regulations**

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**§ 483.10 Resident 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 each of the following rights:

- (a) Exercise of rights.
  - (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.
  - (2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.
  - (3) In the case of a resident adjudged incompetent under the laws of a 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.
  - (4) In the case of a resident who has not been adjudged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.
- (b) Notice of rights and services.

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(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. 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;

(2) The resident or his or her legal representative has the right—

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her records for inspection, to 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.

(3) 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;

(4) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (8) of this section; and

(5) The facility must—

(i) 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—

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) 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

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i) (A) and (B) of this section.

(6) The facility must inform each resident before, or at the time of admission, 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 Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes—

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent

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State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

(8) The facility must comply with the requirements specified in subpart I of part 489 of this chapter relating to maintaining 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 to implement advance directives and applicable State law. Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. If an adult individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(9) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(10) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(11) Notification of changes. (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is—

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

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a). (ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is—

(A) A change in room or roommate assignment as specified in § 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

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(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) Protection of resident funds.

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

(2) 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, as specified in paragraphs (c)(3)–(8) of this section.

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

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

(4) Accounting and records. 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.

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

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

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

(i) When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(ii) 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.

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

(7) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(8) 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 under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with § 489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See § 447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

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- (i) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:
- (A) Nursing services as required at § 483.30 of this subpart.
  - (B) Dietary services as required at § 483.35 of this subpart.
  - (C) An activities program as required at § 483.15(f) of this subpart.
  - (D) Room/bed maintenance services.
  - (E) Routine personal hygiene item and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry.
  - (F) Medically-related social services as required at § 483.15(g) of this subpart. (ii) Items and services that may be charged to residents' funds. Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:
    - (A) Telephone.
    - (B) Television/radio for personal use.
    - (C) Personal comfort items, including smoking materials, notions and novelties, and confections.
    - (D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.
    - (E) Personal clothing.
    - (F) Personal reading matter.
    - (G) Gifts purchased on behalf of a resident.
    - (H) Flowers and plants.
    - (I) Social events and entertainment offered outside the scope of the activities program, provided under § 483.15(f) of this subpart.
    - (J) Noncovered special care services such as privately hired nurses or aides.
    - (K) Private room, except when therapeutically required (for example, isolation for infection control).
    - (L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by § 483.35 of this subpart. (iii) Requests for items and services.
      - (A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.
      - (B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.
      - (C) The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.
      - (d) Free choice.
- The resident has the right to—



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- (1) Choose a personal attending physician;
- (2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and
- (3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) Privacy and confidentiality.

The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when—

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(f) Grievances. A resident has the right to—

(1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) Examination of survey results. A resident has the right to—

(1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(h) Work.

The resident has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) Mail. The resident has the right to privacy in written communications, including the right to—

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage, and writing implements at the resident's own expense.

(j) Access and visitation rights.

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- (1) The resident has the right and the facility must provide immediate access to any resident by the following:
- (i) Any representative of the Secretary;
  - (ii) Any representative of the State;
  - (iii) The resident's individual physician;
  - (iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);
  - (v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);
  - (vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);
  - (vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and
  - (viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.
- (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.
- (3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.
- (k) Telephone. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.
- (l) 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.
- (m) Married couples. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.
- (n) Self-Administration of Drugs. An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined that this practice is safe.
- (o) Refusal of certain transfers. (1) An individual has the right to refuse a transfer to another room within the institution, if the purpose of the transfer is to relocate—
- (i) A resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or
  - (ii) A resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.
- (2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.

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FR 8202, Mar. 6, 1992; 57 FR 43924, Sept. 23, 1992; 57 FR 53587, Nov. 12, 1992; 60 FR 33293, June 27, 1995]