

COLORADO

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;

(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 actions;

(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 judgment 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 to receive 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 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.

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.

(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).

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:

“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 services agencies.