

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:

CHAPTER 10

RESIDENTS' RIGHTS

- a. Inform each resident how to apply for Medicaid;
- 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.
- 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

CHAPTER 10

RESIDENTS' RIGHTS

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.
- 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

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.

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.

CHAPTER 10

RESIDENTS' RIGHTS

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.

CHAPTER 10

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.