

- (a) The rule from which the waiver or variance is requested;
 - (b) The time period for which the waiver or variance is requested;
 - (c) If the request is for a variance, the specific alternative action which the facility proposes;
 - (d) The reasons for the request; and
 - (e) Justification that the goal or purpose of the rule or regulations would be satisfied.
- (2) Requests for a waiver or variance may be made at any time.
 - (3) The Department may require additional information from the facility prior to acting on the request.

D. GRANTS AND DENIALS:

- (1) The Department at its discretion shall grant or deny each request for waiver or variance in writing. A notice of denials shall contain the reasons for denial.
- (2) The terms of a requested variance may be modified upon agreement between the Department and a facility.
- (3) The Department may impose such conditions on the granting of a waiver or variance which it deems necessary.
- (4) The Department may limit the duration of any waiver or variance.
- (5) The Department's action on a request for a waiver is not subject to administrative appeal.

E. REVOCATION: The Department may revoke a waiver or variance if:

- (1) It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident's; or
- (2) The facility has failed to comply with the variance as granted; or
- (3) The licensee notifies the Department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied;
- (4) Required by a change in law.

[5-2-89; 7.9.2.21 NMAC – Rn, 7 NMAC 9.2.21, 8-31-00]

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.

(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 comingled 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.

(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]

7.9.2.23 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 resident's rights established under this section. The 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 by any professional licensing board or designated authority shall be promptly reported by the facility to the appropriate licensing or examining board or authority and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered by any professional licensing board or authority, may also report such allegations to the board.

[5-2-89; 7.9.2.23 NMAC – Rn, 7 NMAC 9.2.23, 8-31-00]

7.9.2.24 COMMUNITY ORGANIZATION 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.

B. Any employee, agent, or designated representative of a community legal services program or community service organization shall be permitted access to any facility whenever visitors are permitted by the written visitation policy referred to in these regulations, but not before 8:00 am., nor after 5:00 p.m. The facility visitation policy shall include provisions for scheduling visits after 5:00 p.m.

C. CONDITIONS:

(1) 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.

(2) Access shall be granted for visits which are consistent with an express purpose of an organization the purpose of which is to:

(a) 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.

(b) 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.

(c) Assist any residents 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.

(d) Engage in any other method of advising and representing residents so as to assure them full