

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

enjoyment of their rights.

[5-2-89; 7.9.2.24 NMAC – Rn, 7 NMAC 9.2.24, 8-31-00]

**7.9.2.25 HOUSING RESIDENTS IN LOCKED UNITS:** Definitions as used in this section:

**A. LOCKED UNIT:** means a ward, wing or room which is designated as a protected 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. An alarmed unit does not constitute a locked unit.

**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.

(1) A resident or responsible party may give consent to reside in a locked unit.

(2) The consent shall be effective only for ninety (90) days from the date of the consent, unless revoked. Consent may be renewed for ninety (90) day periods pursuant to this subsection.

(3) The consent may be revoked by the resident if competent or by legal guardian at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

**C. 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, providing the facility immediately attempts to notify the physician for instructions. A physician's orders for the confinement must be obtained within twelve (12) hours. No resident may be confined for more than an additional seventy-two (72) hours under order of the physician.

[5-2-89; 7.9.2.25 NMAC – Rn, 7 NMAC 9.2.25, 8-31-00]

**7.9.2.26 ADMINISTRATOR/STATUTORY REFERENCE:** A nursing home shall be supervised by an administrator licensed under the Nursing Home Administrators Act, Sections 61-13-16 through 61-13-16 NMSA 1978. Supervision shall include, but not be limited to, taking all reasonable steps to provide qualified personnel to assure the health, safety, and rights of the residents.

**A. FULL-TIME ADMINISTRATOR:** Every nursing home shall be supervised full-time by an administrator licensed under the Nursing Home Administrators Act, except multiple facilities. If more than one nursing home or other licensed health care facility is located on the same or contiguous property, one full-time administrator may serve all the facilities.

**B. ABSENCE OF ADMINISTRATOR:** A person present in and competent to supervise the facility shall be designated to be in charge whenever there is not an administrator in the facility, and shall be identified to all staff.

**C. CHANGE OF ADMINISTRATOR:**

(1) Replacement of administrator: If it is necessary immediately to terminate an administrator, or if the licensee loses an administrator for other reasons, a replacement shall be employed or designated as soon as possible within one-hundred twenty (120) days of vacancy.

(2) Temporary replacement: During any vacancy in the position of administrator, the licensee shall employ or designate a person competent to fulfill the functions of an administrator immediately.

(3) Notice of change of administrator: When the licensee loses an administrator, the licensee shall notify the department within two (2) Department working days of such loss and provide written notification to the Department of the name and qualifications of the person in charge of the facility during the vacancy; and the name and qualifications of the replacement administrator, when known.

[7-1-60, 5-2-89; 7.9.2.26 NMAC – Rn, 7 NMAC 9.2.26, 8-31-00]

**7.9.2.27 EMPLOYEES:** In this section, "employee" means anyone directly employed by the facility on other than a consulting or contractual basis.

**A. QUALIFICATIONS AND RESTRICTIONS:** No person under eighteen (18) years of age shall be employed to provide direct care to residents.

**B. PHYSICAL HEALTH CERTIFICATIONS:** New Employees: Every employee shall be certified in