

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.

(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 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;

(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 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

(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 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 subclause (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;

(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

(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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