

CHAPTER 44:04:17

RESIDENTS' RIGHTS IN NURSING FACILITIES AND ASSISTED LIVING CENTERS

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44:04:17:01. Application of chapter -- Residents' rights policies. Nursing facilities and assisted living centers must comply with this chapter. A nursing facility or assisted living center must establish policies consistent with this chapter to protect and promote the rights of each resident.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:02. Facility to inform resident of rights. Prior to or at the time of admission, a facility must inform the resident, both orally and in writing, of the resident's rights and of the rules governing the resident's conduct and responsibilities while living in the facility. The resident must acknowledge in writing that the resident received the information. During the resident's stay the facility must notify the resident, both orally and in writing, of any changes to the original information. The information must contain the following:

(1) The resident's right to exercise the resident's rights as a resident of the facility and as a citizen of the United States;

(2) The resident's right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising the resident's rights;

(3) The resident's right to have a person appointed to act on the resident's behalf. If a resident has been adjudged incompetent or incapacitated, the resident's rights shall be exercised by the person appointed under state law to act on the resident's behalf. If a resident has not been

adjudged to be incompetent or incapacitated, the resident's rights may be exercised by the legal surrogate recognized under state law, whether statutory or as recognized by the courts of the state to act on the resident's behalf. The facility must record and keep up to date the appointed person's address and phone number;

(4) The resident's right to access records pertaining to the resident. The resident may purchase photocopies of the resident's records or any portions of them. The cost to the resident may not exceed community standards for photocopying, and the facility must provide the photocopies within two working days after the request;

(5) The resident's right to be fully informed of the resident's total health status, including functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health, psychosocial status, and sensory and physical impairments;

(6) The resident's right to refuse treatment and to refuse to participate in experimental research. A resident's right to refuse treatment does not absolve a facility from responsibility to provide for necessary medical services and treatment. Residents who refuse treatment must be informed of the results of that refusal, plus any alternatives that may be available;

(7) The resident's right to formulate a durable power of attorney for health care as provided in SDCL chapter 59-7 and a living will declaration as provided in SDCL chapter 34-12D; and

(8) The resident's right to receive visitors. Visiting hours and policies of the facility must permit and encourage the visiting of residents by friends and relatives.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 19 SDR 95, effective January 7, 1993; subdivision (8) transferred from § 44:04:12:03, 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:03. Facility to provide information on available services. A facility must provide the following information in writing to each resident:

(1) A list of services available in the facility and the charges for such services. The facility must specify which items and services are included in the services for which the resident may not be charged, those other items and services that the facility offers and for which the resident may be charged, and the amount of any such charges;

(2) A description of how a resident can protect personal funds;

(3) A list of names, addresses, and telephone numbers of client advocates;

(4) A description of how to file a complaint with the department concerning abuse, neglect, and misappropriation of resident property;

(5) A description of how the resident can contact the resident's physician, including the name and specialty of the physician;

(6) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the South Dakota Department of Social Services and of the United States Social Security Administration;

(7) A description of the bed-hold policy which indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and

(8) A description explaining the responsibilities of the resident and family members regarding self-administered medication.

A signed and dated admission agreement between the resident or the resident's legal representative and the facility must include subdivisions (1) to (8), inclusive, of this section. The resident or resident's legal representative and the facility shall complete the admission agreement before or at the time of admission and before the resident has made a commitment for payment for proposed or actual care. The agreement may not include ambiguous or misleading information and may not be in conflict with this chapter. The agreement must be printed for ease of reading by the resident. If the agreement exceeds three pages, it must contain a table of contents or an index of principal sections. Any change in the information must be given to the resident or the resident's legal representative as a signed and dated addendum to the original agreement.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 28 SDR 83, effective December 16, 2001.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:04. Notification when resident's condition changes. A facility must immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or interested family member when any of the following occurs:

(1) An accident involving the resident which results in injury or has the potential for requiring intervention by a physician;

(2) A significant change in the resident's physical, mental, or psychosocial status;

(3) A need to alter treatment significantly; or

(4) A decision to transfer or discharge the resident from the facility.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:05. Notification of resident's room assignment or rights change. A facility must promptly notify the resident and, if known, the resident's legal representative, as specified in SDCL 34-12C-3, or interested family member when there has been a change in the resident's room or roommate assignment or when there has been a change in the resident's rights.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:06. Right to manage financial affairs. A resident may manage personal financial affairs. A facility may not require residents to deposit their personal funds with the facility. If the resident chooses to deposit funds with the facility and gives written authorization, the facility must hold the funds in accordance with SDCL 34-12-15.1 to 34-12-15.10, inclusive. This section does not apply to assisted living centers which do not manage residents' personal funds.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:07. Choice in planning care. A resident may choose a personal attending physician, 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, and, unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care or treatment.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

Cross-References:

Right to choose own physician unimpaired by public health programs -- Misdemeanor, SDCL 34-1-20.

Rights of authorized person as incapacitated person, SDCL 34-12C-6.

Liability of health care provider -- Liability of authorized decision maker, SDCL 34-12C-7.

44:04:17:08. Privacy and confidentiality. A facility must provide for privacy and confidentiality for the resident, including the resident's accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. A facility is not required to provide a private room for each resident. A facility must permit residents to perform the following:

(1) To send and receive unopened mail and to have access to stationery, postage, and writing implements at the resident's own expense;

(2) To access and use a telephone without being overheard;

(3) To visit a spouse or, if both are residents of the same facility, to share a room with the spouse, within the capacity of the facility, upon the consent of both spouses;

(4) Except in an emergency, to have room doors closed and to require knocking before entering the resident's room;

(5) To have only authorized staff present during treatment or activities of personal hygiene;

(6) To retire and rise according to the resident's wishes, as long as the resident does not disturb other residents;

(7) To meet, associate, and communicate with any person of the resident's choice in a private place within the facility;

(8) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

(9) To approve or refuse the release of personal and medical records to any individual outside the facility, except when the resident is transferred to another health care facility or when the release of the record is required by law. With the resident's permission, a facility must allow the state ombudsman or a representative of the ombudsman access to the resident's medical records.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

Cross-Reference: Written policies and confidentiality of records, § 44:04:09:04.

44:04:17:09. Quality of life. A facility must provide care and an environment that contributes to the resident's quality of life, including:

(1) A safe, clean, comfortable, and homelike environment;

(2) Maintenance or enhancement of the resident's ability to preserve individuality, exercise self-determination, and control everyday physical needs;

(3) Freedom from physical or chemical restraints imposed for purposes of discipline or convenience;

(4) Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property;

(5) Retention and use of personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents; and

(6) Support and coordination to assure pain is recognized and addressed appropriately.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 28 SDR 83, effective December 16, 2001.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

Cross-Reference: Care policies for nursing facilities, § 44:04:04:11.

44:04:17:10. Grievances. A resident may voice grievances without discrimination or reprisal. A resident's grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other residents, and infringement of the resident's rights. A facility must adopt a grievance process and make the process known to each

resident and to the resident's immediate family. The grievance process must include the facility's efforts to resolve the grievance and documentation of:

- (1) The grievance;
- (2) The names of the persons involved;
- (3) The disposition of the matter; and
- (4) The date of disposition.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:11. Availability of survey results. A resident may examine the results of the department's most recent survey of the facility and any plan of correction in effect. A facility must make available, in a place readily accessible to residents, results of the department's most recent survey, and if applicable, the survey conducted by the United States Department of Health and Human Services and any plans of correction in effect.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:12. Right to refuse to perform services. A resident may refuse to perform services on behalf of the facility, unless otherwise agreed to in the resident's plan of care. The resident may perform services for the facility when the following conditions are met:

- (1) The plan of care includes documentation of the need or desire for work;
- (2) The nature of the services performed is specified, including whether the services are voluntary or paid;
- (3) Compensation for paid services is at or above prevailing rates; and
- (4) The resident agrees to the work arrangement.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:17:13. Self-administration of drugs. A resident may self-administer drugs if the physician, registered nurse, pharmacist, and social worker or designee have determined the practice to be safe. The determination must state whether the resident or the nursing staff is responsible for storage of the drug and documentation of its administration in accordance with chapter 44:04:08. In an assisted living center a resident may self-administer drugs if the registered nurse (if applicable), physician, and pharmacist have determined the practice to be safe.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 19, 1995; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

Cross-References: Medication control, ch 44:04:08; Restricted admissions to assisted living centers, § 44:04:04:12(6).

44:04:17:14. Admission, transfer, and discharge policies. A facility must establish and maintain policies and practices for admission, discharge, and transfer of residents which prohibit discrimination based upon payment source and which are made known to residents at or before the time of admission. The policies and practices must include:

(1) The resident may remain in the facility and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the facility, the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, the safety or health of individuals in the facility is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the facility ceases to operate;

(2) The facility must notify the resident and a family member or client advocate in writing at least 30 days before the transfer or discharge unless a change in the resident's health requires immediate transfer or discharge or the resident has not resided in the facility for 30 days. The written notice must specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;

(3) Conditions under which the resident may request or refuse transfer within the facility;
and

(4) A description of how the resident may appeal a decision by the facility to transfer or discharge the resident.

Source: 19 SDR 95, effective January 7, 1993; 22 SDR 70, effective November 10, 1995.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.