

### 3. RESIDENTS' RIGHTS

#### 3.1 Nursing Facility Policies and Procedures

- (a) The governing body of the facility shall establish written policies and procedures regarding the rights and responsibilities of residents.
- (b) Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing such policies.
- (c) The facility's policies and procedures shall be made available upon request to:
  - (1) residents or potential residents;
  - (2) their guardians;
  - (3) their next of kin;
  - (4) representative payees; and
  - (5) reciprocal beneficiary.

#### 3.2 Duties of Staff

It is the duty of all members of the nursing facility staff to ensure that every resident under their care is accorded all rights set out in Sections 3 and 4.

#### 3.3 Rights of Resident Representatives

- (a) The rights and obligations established under these rules shall devolve to a resident's court-appointed guardian, next of kin, reciprocal beneficiary or health care agent pursuant to a durable power of attorney for health care if the resident:
  - (1) has been adjudicated incompetent;
  - (2) lacks capacity to understand or exercise a right granted under this section, as certified in writing by the resident's attending physician and another individual, who shall be a physician or a qualified mental health professional as defined by 14 V.S.A. §3061(10). Certification of the resident's lack of capacity shall be filed in the resident's medical record at the facility; or
  - (3) exhibits a non-remedial communication barrier.

(b) If the resident's wishes are not known, the guardian, next of kin, reciprocal beneficiary or health care agent shall make decisions in accordance with the resident's best interests and in accordance with accepted medical practices.

(c) Notwithstanding the provisions of (a) and (b) of this subsection and irrespective of the resident's capacity to understand or exercise his or her rights, a right may not be exercised or waived by next of kin or by a health care agent over the resident's objections. The facility shall make every reasonable effort to communicate the rights and obligations established under this chapter directly to the resident.

(d) If the rights of a resident have devolved to another individual, the facility shall keep a copy of the relevant court order or other documents which provide evidence of legal authority in the resident's file.

(e) If the eligible group of kin consists of more than one person, the agreement of the majority of the members of the group is required for a decision to be made on behalf of the resident. If there is no agreement by a majority of the members of the group, the group and all kin having lower priority are disqualified from making the decision.

(f) In the event that a resident objects to a decision made on his or her behalf by the next of kin or by the resident's health care agent, the facility shall immediately notify the long term care ombudsman.

### 3.4 Confidentiality and Access to Records

(a) Each resident shall be assured confidential treatment of his or her personal and medical records, and may approve or refuse their release to any individual outside the facility, except in the case of his or her transfer to another health care institution, or as required by law or third-party payment contract.

(b) Upon an oral or written request, each resident shall be given access to all records pertaining to himself or herself, including current clinical records within 24 hours (excluding weekends and holidays).

(c) After receipt of his or her records for inspection, a resident may purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them, upon request and 2 working days advance notice to the facility.

(d) Residents and their families, including a reciprocal beneficiary, shall have the right to review current and past state and federal survey and inspection reports of the facility, and upon request, to receive from the facility a copy of any report. Copies of reports shall be available for review at any time at one station in the facility. The facility may charge an amount not to exceed the community standard for more than one copy per resident.

### 3.5 Information Rights

(a) Each resident shall be fully informed, as evidenced by the resident's written acknowledgement, prior to or at the time of admission and as well as during the stay of the rights set out in this section and of all rules and regulations governing resident conduct and responsibilities.

(b) The staff shall make reasonable accommodation to communicate the resident's bill of rights to residents with communication impairments and residents who speak a language other than English.

(c) Each resident shall be fully informed by a physician of his or her medical condition.

(d) A summary of the obligations of the facility to residents shall be written in clear language, in easily readable print, and posted conspicuously in a public place on each floor. Such notice also shall summarize the facility's grievance procedure and give directions for contacting the ombudsman program.

### 3.6 Treatment and Experimental Research

(a) Each resident shall be afforded the opportunity to participate in the planning of his or her medical treatment.

(b) To the extent permitted by law, the resident has the right to refuse care or treatment, including the right to refuse restraint and to discharge himself or herself from the facility, and to be informed of the consequences of that action. The nursing home shall be relieved of any further responsibility for that refusal.

(c) Any resident may refuse to participate in experimental research.

### 3.7 Written Information

(a) The facility must furnish a written description of the residents' legal rights which includes:

(1) a description of the manner of protection of personal funds under subsections 3.10(a), 3.10(b)(1), and 3.10(b)(2) of these rules.

(2) a posting of the names, addresses, and telephone numbers of all pertinent State client advocacy groups, such as the licensing agency, the ombudsman, protection and advocacy organizations and the Medicaid Provider Fraud Unit of the Office of the Attorney General.

### 3.8 Advance Directives

(a) The right to formulate an advance directive applies to each individual resident without restriction.

(b) The facility must maintain written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies implementing advance directives.

(c) A facility must have the capacity to administer cardiopulmonary resuscitation (CPR) to any resident when necessary and in accordance with the resident's advance directives.

### 3.9 Right to Choose Personal Physician

The resident shall have the right to choose his or her own personal physicians, and the right to request and receive a second opinion from a physician of the resident's choice where significant alternatives for care or treatment exist, or when the resident requests information concerning care or treatment alternatives, the resident shall receive such information from his or her doctor or the administrator, as appropriate.

### 3.10 Management of Resident's Personal Funds

(a) Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for personal funds of the resident deposited with the facility, as specified in subsections 3.10(b) through 3.10(f) of this section.

(b) Deposit of funds:

(1) Funds in excess of \$50. The facility must deposit any resident's personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on a resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(2) Funds less than \$50. The facility must maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(c) Accounting and records:

(1) The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(2) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than the resident.

(3) The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.

(d) Notice of certain balances.

The facility must notify each resident that receives Medicaid benefits:

(1) When the amount in the resident's account reaches \$200 or less than the SSI resource limit for one person; and

(2) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(e) Conveyance upon death or discharge.

Upon the death or discharge of a resident with personal funds deposited with the facility, the facility must convey, within 30 days, the residents funds, and a final accounting of those funds, to the discharged resident, or the individual or probate jurisdiction administering the resident's estate.

(f) Assurance of financial security.

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the licensing agency, to assure the security of all personal funds of residents deposited with the facility.

### 3.11 Resident Work

Residents are not required to perform services for the facility that are not included for therapeutic purposes in his or her plan of care.

### 3.12 Bed Hold and Right of Return

(a) After hospitalization, each resident has the right to return to the first available bed in the nursing home he or she came from, if the patient has not retained his or her bed under subsection 3.12(b), provided the facility is able to meet the resident's medical needs and the resident's welfare or that of other residents will not be adversely affected.

(b) Upon payment of his or her usual rate or, in the case of Medicaid residents, his or her certified per diem compensation, each resident has the right to retain his or her bed in the nursing home while absent from the facility due to hospitalization or therapeutic leave, provided such absence does not exceed ten successive days. Upon admission, before a nursing facility allows a resident to go on therapeutic leave and upon or as soon as practicable after transfer to a hospital, a nursing facility must provide written information to the resident and a family member or legal representative that specifies:

(1) The duration of the bed-hold policy during which the resident is permitted to return and resume residence in the nursing facility; and

(2) The nursing facility's policies regarding bed-hold periods permitting a resident to return.

(c) A nursing facility must 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 requires the services provided by the facility.

### 3.13 Self-Administration of Drugs

An individual resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

### 3.14 Transfer and Discharge

(a) Refusal of Certain Transfers. An individual has the right to refuse a transfer to another room within the institution, if the purpose of the transfer is to relocate:

(1) a resident of a Medicare Skilled Nursing Facility (SNF) from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF.

(2) a resident of a Non-Medicare Certified Nursing Facility (NF), from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

(b) Transfer and Discharge Requirements. The facility must permit each resident to remain in the room or in the facility, and not transfer or discharge the resident from the facility, unless:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met 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;

(3) the health or safety of individuals in the facility is endangered;

(4) 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 nursing facility, the nursing facility may charge a resident allowable charges under Medicaid;

(5) the facility ceases to operate; or

(6) the transfer or discharge is ordered by a court.

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in this subsection, the circumstances must be documented in the resident's clinical record. The documentation must be made by the resident's physician when transfer or discharge is necessary under subsections 3.14(b)(1), (2), (3) or (4) or 3.14 (l).

(d) Notice before transfer or discharge. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a family member, including a reciprocal beneficiary, or legal representative of the resident, of the proposed transfer or discharge and reasons for the move. The notice shall be in writing and in a language and manner they understand, and shall be given at least 72 hours before a transfer within the facility and 30 days before the discharge from the facility.

(2) record the reasons in the resident's clinical record; and

(3) include in the notice the items described in subsection 3.14(e) below.

(e) Contents of the notice. The written notice specified in this subsection shall be on a form provided by the licensing agency or one that is substantially similar and must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is being transferred or discharged;

(4) a statement in large print or large point type that the resident has the right to appeal the facility's decision to transfer or discharge to the State, with the appropriate information regarding how to do so as set forth in 3.14 (h) below;

(5) the name, address and telephone number of the State Long Term Care Ombudsman;

(6) a statement that the resident may remain in place pending the appeal;

(7) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the Developmental Disability Law Project and that of the Vermont Department of Developmental and Mental Health Services, Division of Developmental Services; and/or

(8) for nursing facility residents who are mentally ill, the mailing address and telephone number of Vermont Protection and Advocacy, Inc.

(f) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(g) Discharge to community setting. No resident appropriate for nursing home care may be discharged to a community setting against his or her will. A facility must document that a resident voluntarily discharged to a community setting understood fully all options for care and understood fully the right to refuse such a discharge.

(h) Appeal process. A resident has the right to appeal the facility's decision to transfer or discharge. The process for appeal is as follows:

(1) To appeal the decision to transfer or discharge, the resident must notify the administrator of the facility or the director of the licensing agency. Upon receipt of an appeal, the administrator must immediately notify the director of the licensing agency.

(2) The request to appeal the decision may be oral or written and must be made within 10 business days of the receipt of the notice by the resident.

(3) Both the facility and the resident shall provide all the materials deemed relevant to the decision to transfer or discharge to the director of the licensing agency as soon as the notice of appeal is filed. The resident may submit orally if unable to submit in writing. Copies of all materials submitted to the licensing agency shall be provided to the resident by the facility.

(4) The director of the licensing agency will render a decision within eight business days of receipt of the notice of appeal.

(5) The notice of decision from the director will be sent to the resident and to the facility, will state that the decision may be appealed to the Human Services Board, and will include information on how to do so.

(6) The resident or the facility will have 10 business days to file a request for an appeal with the Human Services Board by writing to the Board. The Human Services Board will conduct a de novo evidentiary hearing in accordance with 3 V.S.A. §3091.

(i) Transfer or Discharge Agreement. If the resident agrees to the transfer or discharge, the transfer or discharge may occur prior to the effective date of the notice.

(j) Relocation Charges. A facility is responsible for any charges associated with disconnecting, relocating or reconnecting telephones, cable television, air-conditioning or other similar costs resulting from a facility's decision to transfer the resident within the facility.

(k) Right to Redeem. When non-payment is the basis for the discharge from a facility, the resident has the right to redeem up to the effective date of the discharge. If the

resident redeems in full, the discharge proceedings will be terminated and the resident has the right to remain in the facility.

(1) Emergency Transfer or Discharge of Residents. An emergency discharge or transfer may be made with less than thirty (30) days' notice under the following circumstances:

(1) The resident's attending physician documents in the resident's record that the discharge or transfer is an emergency measure necessary for the health and safety of the resident or other residents; or

(2) A natural disaster or emergency necessitates the evacuation of residents from the home; or

(3) The resident presents an immediate threat to the health or safety of self or others. In that case, the licensee shall request permission from the licensing agency to discharge or transfer the resident immediately. Permission from the licensing agency is not necessary when the immediate threat requires intervention of the police, mental health crisis personnel, or emergency medical services personnel who render the professional judgment that discharge or transfer must occur immediately. In such cases, the licensing agency shall be notified on the next business day; or

(4) When ordered or permitted by a court.

### 3.15 Equal Access to Quality Care

(a) A facility must establish and maintain identical policies and practices regarding admission, transfer, discharge, and the provision of services under the State Medicaid Plan for all individuals regardless of source of payment.

(b) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in paragraph 3.16(c) of this section describing the charges.

### 3.16 Admissions and Payment Policy

(a) A nursing facility shall not:

(1) require residents or potential residents to waive their rights to Medicare or Medicaid;

(2) require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits; and

(3) require, request, or accept a deposit or other payment from a Medicare or Medicaid beneficiary as a condition for admission, continued care, or the provision of service.

(b) A nursing facility 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. However, the facility may require an individual who has legal right and 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 facility payment from a resident's income or resources.

(c) Each resident shall be fully informed, prior to or at the time of admission and during their stay of services available in the facility and of related charges, including any charges for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate, including the facility's policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items.

(d) The facility shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits and allowable uses of the resident's income for items and services not covered by Medicaid and Medicare.

(e) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Medicaid Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,

(1) a nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on request for and receipt of such additional services; and

(2) a nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(f) The facility shall inform each resident when changes are made to the items and services specified in subsections 3.16(c) and 3.16(d) above.

(g) Anyone admitted to a nursing facility shall receive options counseling as follows:

(1) Anyone seeking admission to a nursing facility directly from home or from a residential care home shall receive options counseling prior to admission to the nursing facility. Upon receipt of an application for admission to the nursing facility, the facility shall inform the individual of the requirement for options counseling. The facility shall

make a written referral, using a form provided by the Department, to the local options counseling agency upon receipt of the application and prior to admitting the individuals.

(2) An individual who is hospitalized and seeking admission to a nursing facility may be discharged directly from the hospital to the nursing facility. In such instances, the individual shall receive options counseling no later than three working days after admission to the facility, unless the options counseling agency has provided options counseling in the hospital. The nursing facility shall make a referral in writing to the options counseling agency in the area no later than one working day after agreeing to admit the individual. If upon admission it is determined that the individual will remain in the facility for no longer than 21 days, the options counseling agency may elect not to conduct options counseling within three working days.

(3) If an individual needs emergency admission to a nursing facility, the individual may be admitted to the facility prior to receiving options counseling. Emergency is defined for purposes of this section as a situation in which an individual is likely to experience death or serious and permanent harm unless admitted to a nursing facility.

(4) An individual admitted to or requesting admission to a nursing facility may decline options counseling after contact by the options counseling agency. The decision to decline options counseling must be recorded in the resident's record.

(5) Options counseling is not required for individuals re-admitted to the nursing facility after a hospital stay or other short absence, or for individuals transferred from one nursing facility to another or for individuals entering for a respite stay.

(6) Options counseling shall be provided by the Department or by an organization under contract with the Department.

### 3.17 Freedom from Restraints and Abuse

#### (a) General.

Each resident shall be free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or herself or to others, or when exercising a right to refuse treatment under section 3.6.

#### (b) Restraints.

The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(1) The facility shall inform residents of its restraint policy and appeal rights under the facility's grievance procedure.

(2) The policy must include the release of the restraints at intervals of every two hours or less, for ten minutes for exercise and repositioning.

(c) Abuse.

A resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(d) Staff treatment of residents.

(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(2) The facility must not use verbal, mental, sexual or physical abuse, corporal punishment, or involuntary seclusion.

(3) A nursing facility shall not employ individuals who have been:

(i) found guilty of abusing, neglecting, exploiting or mistreating residents by a court of law; or

(ii) have had a finding entered into the Vermont State Nurse Assistants Registry or the Vermont Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

(e) A nursing facility shall report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the Vermont State Nurse Assistants Registry or the appropriate licensing authority and the licensing agency. Actions by a court of law which indicate unfitness for service include a charge of abuse, neglect or exploitation substantiated against an employee or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction within or outside the State of Vermont.

(f) The facility must ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and the licensing agency and Adult Protective Services in accordance with 33 V.S.A. Chapter 69.

(g) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(h) The results of all investigations must be reported to the administrator or his or her designated representative and to the licensing agency in accordance with 33 V.S.A. Chapter 69, and if the alleged violation is verified, appropriate corrective action must be taken.