

**Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.**

(b) The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the department considers appropriate and necessary taking all facts and circumstances into account.

(c) A licensee shall fully comply with all requirements and restrictions of the license.

**(8) REPORTING.** Every 12 months, on a schedule determined by the department, a nursing home licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If a nursing home licensee who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; cr. (5), Register, November, 1985, No. 359, eff. 12-1-85; r. and recr., Register, January, 1987, No. 373, eff. 2-1-87; emerg. cr. (1m), eff. 7-1-88; am. (3) (c), renum. (4) to (6) to be (5) to (7) and am. (5) and (6) (a), cr. (4), Register, February, 1989, No. 398, eff. 3-1-89; cr. (1m), Register, October, 1989, No. 406, eff. 11-1-89; am. (6), cr. (8), Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 132.15 Certification for medical assistance.**

For requirements for certification under the medical assistance program, see ch. HFS 105.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82.

**Subchapter II — Enforcement****HFS 132.21 Waivers and variances. (1) DEFINITIONS.**

As used in this section:

(a) “Waiver” means the grant of an exemption from a requirement of this chapter.

(b) “Variance” means the granting of an alternate requirement in place of a requirement of this chapter.

**(2) REQUIREMENTS FOR WAIVERS OR VARIANCES.** A waiver or variance may be granted if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident; or

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interests of better care or management.

**(3) PROCEDURES.** (a) *Applications.* 1. All applications for waiver or variance from the requirements of this chapter shall be made in writing to the department, specifying the following:

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 sub. (2) 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.

(b) *Grants and denials.* 1. The department shall grant or deny each request for waiver or variance in writing. Notice of denials shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

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.

(c) *Hearings.* 1. Denials of waivers or variances may be contested by requesting a hearing as provided by ch. 227, Stats.

2. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) *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 residents; 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; or

4. Required by a change in law.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; am. (3) (a) 1. d., Register, January, 1987, No. 373, eff. 2-1-87.

**Subchapter III — Residents’ Rights and Protections**

**HFS 132.31 Rights of residents. (1) RESIDENTS’ RIGHTS.** Every resident shall, except as provided in sub. (3), 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.

3. Have private visits, pursuant to a reasonable written visitation policy.

(b) *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.

(c) *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 authorizes this action in writing. The facility shall obtain separate authorizations 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 commingled 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 and property 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. If the resident has authorized discretionary expenditures by the facility and the facility has accepted responsibility for these

**Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.**

expenditures, upon written request of the resident, the resident's guardian or a designated representative of the resident, the facility shall issue this statement monthly; and

4. The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.

(d) *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 any other responsible person designated in writing by the resident 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 s. HFS 132.70 (3):

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.

2. No statement of admission information may be in conflict with any part of this chapter.

(e) *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 of health care and pharmacists with whom the resident comes in contact.

(f) *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 contraindicated as documented by the resident's physician in the resident's medical record.

**Note:** See s. HFS 132.84 (1) (a).

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 personal 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.

(g) *Work.* Not be required to perform work for the facility, but may work for the facility if:

1. The work is included 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.

(h) *Outside activities.* Meet with and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contraindicated as documented by the resident's physician in the resident's medical record.

(i) *Personal possessions.* Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.

(j) *Transfer or discharge.* Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

**Note:** See s. HFS 132.53.

(k) *Abuse and restraints.* 1. Be free from mental and physical abuse, and be free from chemical and physical restraints except when required to treat the resident's medical symptoms and as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record.

2. Notwithstanding the limitation in subd. 1. for using restraints only to treat a resident's medical symptoms, physical restraints may be used in an emergency when necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that written authorization for continued use of the physical restraints is obtained from the physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical record. In this paragraph, "physical restraint" means any manual method, article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but does not include a mechanical support as defined under s. HFS 132.60 (6) (a) 2.

**Note:** See ss. HFS 132.33, 132.43, and 132.60 (6).

(L) *Care.* Receive adequate and appropriate care within the capacity of the facility.

(m) *Choice of provider.* Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice.

(n) *Care planning.* Be fully informed of one's treatment and care and participate in the planning of that treatment and care.

(o) *Religious activity.* Participate in religious activities and services, and meet privately with clergy.

(p) *Nondiscriminatory 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, except that a facility only part of which is certified for Medicare reimbursement under 42 USC 1395 is not prohibited from assigning a resident to the certified part of the facility because the source of payment for the resident's care is Medicare.

2. Facilities shall offer and provide an identical package of basic services meeting the requirements of this chapter to all individuals regardless of the source of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, or enhancements of individual components 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 pursuant to par. (d) 1. b.

**Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.**

3. If a facility offers at extra charge additional services which are not covered by the medical assistance program under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108, 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 or any other item which discloses the source from which the facility's charges for that resident's care are paid.

**(2) INCOMPETENCE.** If the resident is found incompetent by a court under ch. 880, Stats., 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.

**(3) 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.

**(4) NOTIFICATION.** (a) *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.

(b) *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 or guardian, if any, or any other responsible person designated in writing by the resident, at the time the amendment is put into effect. The facility shall provide the resident or guardian, if any, or any other responsible person designated in writing by the resident and each member of the facility's staff with a copy of all amendments.

(c) *Posting.* Copies of the residents' rights provided under this chapter and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

**(5) 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.

**(6) 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 residents' 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 under chs. 441, 446 to 450, 455, and 456, Stats., shall be promptly reported by the facility to the appropriate licensing or examining board and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered under chs. 441, 446 to 450, 455 or 456, Stats., may also report such allegations to the board.

(d) *Liability.* No person who files a report as required in par. (c) or who participates, in good faith, in the review system established under par. (b) shall be liable for civil damages for such acts, in accordance with s. 50.09 (6) (c), Stats.

(e) *Summary of complaints.* The facility shall attach a statement which summarizes complaints or allegations of violations of rights established under this section to an application for a license.

The statement shall contain the date of the complaint or allegation, the names of the persons involved, the disposition of the matter, and the date of disposition. The department shall consider the statement in reviewing the application.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; r. and recr. (1) (c), (d), (j), (m), (2) to (4), renum. (5) to (6), cr. (1) (p) and (5), Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (d) 1. intro., (k) and (4) (b), Register, February, 1989, No. 398, eff. 3-1-89; am. (6) (e), Register, August, 2000, No. 536, eff. 9-1-00; **CR 04-053: am. (1) (k) Register October 2004 No. 586, eff. 11-1-04.**

**HFS 132.32 Community organization access.**

**(1) 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; and
4. Inspect the health care and other records of a resident under ss. 146.81 through 146.83, Stats. Access does not include the right to examine the business records of the facility without the consent of the administrator or designee.

(b) Any employee, agent, or designated representative of a community legal services program or community service organization who meets the requirements of sub. (2) shall be permitted access to any facility whenever visitors are permitted by the written visitation policy referred to in s. HFS 132.31 (1) (a) 3., but not before 8:00 a.m., or after 9:00 p.m.

**(2) CONDITIONS.** (a) 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, and evidence of compliance with par. (b).

(b) Access shall be granted for visits which are consistent with an express purpose of an organization which is currently registered with the state board on aging and long term care or purpose of which is to:

1. 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;
2. 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;
3. Assist any resident 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; or
4. Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; **CR 04-053: am. (1) (b) Register October 2004 No. 586, eff. 11-1-04.**

**HFS 132.33 Housing residents in locked units.**

**(1) DEFINITIONS.** As used in this section:

(a) "Locked unit" means a ward, wing or room which is designated as a protective 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.

(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.

**(2) RESTRICTION.** Except as otherwise provided by this section, no resident may be housed in a locked unit. Physical or chemical restraints or repeated use of emergency restraint under sub. (5) may not be used to circumvent this restriction. Placement in a locked unit shall be based on the determination that this placement

**Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.**

is the least restrictive environment consistent with the needs of the person.

**Note:** For requirements relating to the use of physical and chemical restraints, including locked rooms, see s. HFS 132.60 (6).

**(3) PLACEMENT.** (a) A resident may be housed in a locked unit under any one of the following conditions:

1. The resident consents under sub. (4) to being housed on a locked unit;
2. The court that protectively placed the resident under s. 55.06, Stats., made a specific finding of the need for a locked unit;
3. The resident has been transferred to a locked unit pursuant to s. 55.06 (9) (c), Stats., and the medical record contains documentation of the notice provided to the guardian, the court and the agency designated under s. 55.02, Stats.; or
4. In an emergency governed by sub. (5).

(b) A facility may transfer a resident from a locked unit to an unlocked unit without court approval pursuant to s. 55.06 (9) (b), Stats., if it determines that the needs of the resident can be met on an unlocked unit. Notice of the transfer shall be provided as required under s. 55.06 (9) (b), Stats., and shall be documented in the resident's medical record.

**(4) CONSENT.** (a) A resident may give consent to reside in a locked unit.

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

(c) The consent of par. (a) may be revoked by the resident at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

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

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; am. (1) (a) and (2), r. and recr. (3), Register, January, 1987, No. 373, eff. 2-1-87.

### Subchapter IV — Management

**HFS 132.41 Administrator.** **(1) STATUTORY REFERENCE.** Section 50.04 (2), Stats., requires that a nursing home be supervised by an administrator licensed under ch. 456, Stats. 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.

**(2) FULL-TIME ADMINISTRATOR.** Every nursing home shall be supervised full-time by an administrator licensed under ch. 456, Stats., except:

(a) *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) *Small homes.* A facility licensed for 50 beds or less shall employ an administrator for at least 4 hours per day on each of 5 days per week. No such administrator shall be employed in more than 2 nursing homes or other health care facilities.

**(3) 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.

**(4) CHANGE OF ADMINISTRATOR.** (a) *Termination of administrator.* Except as provided in par. (b), no administrator shall be terminated unless recruitment procedures are begun immediately.

(b) *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 120 days of the vacancy.

(c) *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.

(d) *Notice of change of administrator.* When the licensee loses an administrator, the licensee shall notify the department within 2 working days of 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.

**Note:** See s. 50.04 (2), Stats.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82.

**HFS 132.42 Employees.** **(1) DEFINITION.** In this section, "employee" means anyone directly employed by the facility on other than a consulting or contractual basis.

**(2) QUALIFICATIONS AND RESTRICTIONS.** No person under 16 years of age shall be employed to provide direct care to residents. An employee less than 18 years of age who provides direct care to residents must work under the direct supervision of a nurse.

**(3) PHYSICAL HEALTH CERTIFICATIONS.** (a) *New employees.* Every employee shall be certified in writing by a physician, physician assistant or an advanced practice nurse prescriber as having been screened for the presence of clinically apparent communicable disease that could be transmitted to residents during the normal performance of the employee's duties. This certification shall include screening for tuberculosis within 90 days prior to employment.

(b) *Continuing employees.* Employees shall be rescreened for clinically apparent communicable disease as described in par. (a) based on the likelihood of exposure to a communicable disease, including tuberculosis. Exposure to a communicable disease may be in the facility, in the community or as a result of travel or other exposure.

(c) *Non-employees.* Persons who reside in the facility but are not residents or employees, such as relatives of the facility's owners shall be certified in writing as required in pars. (a) and (b).

**(4) DISEASE SURVEILLANCE AND CONTROL.** When an employee or prospective employee has a communicable disease that may result in the transmission of the communicable disease, he or she may not perform employment duties in the facility until the facility makes safe accommodations to prevent the transmission of the communicable disease.

**Note:** The Americans with Disabilities Act and Rehabilitation Act of 1973 prohibits the termination or non-hiring of an employee based solely on an employee having an infectious disease, illness or condition.

**(5) VOLUNTEERS.** Facilities may use volunteers provided that the volunteers receive the orientation and supervision necessary to assure resident health, safety, and welfare.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; am. (3) (a) and (4), Register, January, 1987, No. 373, eff. 2-1-87; CR 03-033: am. (3) (a), r. and recr. (4) Register December 2003 No. 576, eff. 1-1-04; CR 04-053: am. (3) and (4) Register October 2004 No. 586, eff. 11-1-04.

**HFS 132.43 Abuse of residents.** **(1) CONSIDERATE CARE AND TREATMENT.** Residents shall receive considerate care and treatment at all times consistent with s. 50.09 (1) (e), Stats.

**(2) RESIDENT ABUSE.** No one may abuse a resident.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82.

**HFS 132.44 Employee development.** **(1) NEW EMPLOYEES.** (a) *Orientation for all employees.* Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to residents' rights under s. HFS 132.31 and to their position and duties by the time they have worked 30 days.