

**FEDERAL RIGHTS OF NURSING FACILITY RESIDENTS
REQUIREMENTS FOR NURSING FACILITIES
From the Federal Medical Assistance (Medicaid) Law, 42 U.S.C. § 1396r(c)**

SPECIFIED RIGHTS

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

Free choice The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident judged to be incompetent) to participate in planning care and treatment or changes in care and treatment.

Free from restraints The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

- (I)** to ensure the physical safety of the resident or other residents, and
- (II)** only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

Privacy The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

Confidentiality The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding weekends or holidays) after making such a request.

Accommodation of needs The right—

- (I)** to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and
- (II)** to receive notice before the room or roommate of the resident in the facility is changed.

Grievances The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

Participation in resident and family groups The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

Participation in other activities The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

Examination of survey results The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

Refusal of certain transfers The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter XVIII of this chapter) to a portion of the facility that is such a skilled nursing facility.

Other rights Any other right established by the Secretary.

The right to privacy shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer shall not affect the resident's eligibility or entitlement to medical assistance or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.

NOTICE OF RIGHTS

A nursing facility must—

- (i)** inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance, including the right to request a financial assessment under this law;
- (ii)** make available to each resident, upon reasonable request, a written statement of such rights, including any notice developed under this law;
- (iii)** inform each resident who is entitled to medical assistance --
 - (I)** at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under this law) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted under this law), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services; and
 - (II)** of changes in the items and services described in (I) and of changes in the charges imposed for items and services described in (I); and
- (iv)** inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this law or by the facility's basic per diem charge.

The written description of legal rights under should include a description of the protection of personal funds under this law and a statement that a resident may file a complaint with a State survey and certification agency regarding resident abuse and neglect and misappropriation of resident property in the facility.

RIGHTS OF INCOMPETENT RESIDENTS

In the case of a resident judged to be incompetent under the laws of a State, the rights of the resident shall, to the extent judged necessary by the proper court, be exercised by, the person appointed under State law to act on the resident's behalf.

USE OF PSYCHOPHARMACOLOGIC DRUGS

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described above) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

TRANSFER AND DISCHARGE RIGHTS

In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

- (i)** the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- (ii)** 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;
- (iii)** the safety of individuals in the facility is endangered;
- (iv)** the health of individuals in the facility would otherwise be endangered;
- (v)** the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or
- (vi)** the facility ceases to operate.

In each of the cases described in (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in (i) and (ii), the documentation must be made by the resident's physician, and in the case described in (iv) the documentation must be made by a physician. For purposes of (v), in the case of a resident who becomes eligible for assistance after admission to the facility, only charges which may be imposed under this law shall be considered to be allowable.

Pre-transfer and pre-discharge notice

In general Before effecting a transfer or discharge of a resident, a nursing facility must—

- (I)** notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons for the discharge;
- (II)** record the reasons in the resident's clinical record (including any documentation required above); and

(III) include in the notice the items described below.

Timing of notice The notice must be made at least 30 days in advance of the resident's transfer or discharge except

(I) when the safety of individuals in the facility is endangered or the health of individuals in the facility would otherwise be endangered;

(II) when the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) the resident's welfare cannot be met in the facility and a more immediate transfer or discharge is necessary because of the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

Items included in notice: Each notice must include—

(I) Notice of the resident's right to appeal the transfer or discharge under the State process established under this law;

(II) the name, mailing address, and telephone number of the State long-term care ombudsman;

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and

(IV) in the case of mentally ill residents, the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

Information respecting advance directives

A nursing facility must comply with the requirement of federal Medicaid law (relating to maintaining written policies and procedures respecting advance directives).

ACCESS AND VISITATION RIGHTS

A nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by a State long-term care ombudsman, by a protection and advocacy agency for persons with developmental disabilities or mental illness, or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a 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; and

(E) permit representatives of the State ombudsman, with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

EQUAL ACCESS TO QUALITY CARE

In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

Construction

(i) Nothing prohibiting any charges for non-medicaid patients. This shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice above describing such charges.

(ii) No additional services required. This shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

PROTECTION OF RESIDENT FUNDS

In general

The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this section.

Management of personal funds

Upon written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit The facility must deposit any amount of personal funds in excess of \$50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and allow the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances The facility must notify each resident receiving medical assistance under the State plan of when the amount in the resident's account reaches \$200 less than the dollar amount determined under this law and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits.

(iv) Conveyance upon death Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this law.

LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS

In general

A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan that exceed the payment amounts established by the State for such services.

“Certain medicaid-eligible individual” defined

The term “certain medicaid-eligible individual” means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

POSTING OF SURVEY RESULTS

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility.