



Nursing Home Residents' Rights

INTRODUCTION

State and federal regulations require nursing homes to have written policies covering the rights of residents. The facility must implement these policies and explain them to the resident.



Any person requiring nursing home care should be able to enter any nursing home and receive appropriate care, be treated with courtesy and enjoy continued civil and legal rights.

This booklet describes your rights and the responsibilities nursing homes have for ensuring those rights.

This module is written to describe residents' rights and the responsibilities a facility has in ensuring those rights.

RESIDENT RIGHTS

Nursing home residents have the right to:

- Dignity, respect and a comfortable living environment;
- Quality of care and treatment without discrimination;
- Freedom of choice to make your own, independent decisions;
- The safeguard of your property and money;
- Safeguards in admission, transfer and discharge;
- Privacy in communications;
- Participate in organizations and activities of your choice;
- An easy to use and responsive complaint procedure;
- Exercise all of your rights without fear of reprisals.

DIGNITY AND RESPECT

The resident has the right to:

- be treated with dignity, respect and consideration at all times;
- privacy in the treatment and care of your personal needs;
- choose activities, schedules and health care consistent with your interests and plan of care;
- communicate with and have access to people and services inside and outside the facility;
- be consulted when the facility sets policies about your rights, responsibilities and aspects of your life in the facility;
- staff assistance in interpretation of your rights.

The facility must:

- ensure that you are treated as an individual and encourage you to participate in programs and services of your choice;
- provide you with safe, clean and comfortable rooms and surroundings;
- protect you from any kind of harsh and abusive treatment;
- provide you privacy in communicating and associating with people of your choice.

ADMISSION

The resident has the right to:

- nondiscrimination in admissions;
- equal access to quality care;
- apply for Medicare or Medicaid benefits;
- the absence of a guarantee of payment from another person or source other than yourself for admission or continued stay.





The facility must:

- provide access to quality care by exercising identical policies and practices covering provision of all required services regardless of your source of payment;
- obey all pertinent state and local laws that prohibit discrimination against individuals entitled to Medicaid benefits;
- give explicit advice to you concerning your right to non-discriminatory treatment in admissions (State regulations prohibit discrimination against individuals entitled to Medicaid benefits.);
- fully inform you and your designated representative both verbally and in writing (in a language that you understand) of your rights and all facility rules and regulations governing your conduct and your responsibilities during your stay. This information must be given to you prior to or upon admission and during your stay. You must acknowledge receipt of this information in writing. The facility must also post a summary of this information.

The facility must not:

- require a third-party guarantee of payment as a condition of admission, expedited admission or continued stay in the facility;
- charge, solicit, accept or receive (in addition to any amount otherwise required to be paid by third-party payors) any gift, money donation or other consideration as a precondition of admission, expedited admission, special room assignment or continued stay in the facility, beyond the amount needed for prepayment of basic services for up to three months;
- require you to waive your rights to Medicare or Medicaid;
- require verbal or written assurance that you are not eligible for, or will not apply for, Medicare or Medicaid benefits.

The facility may:

- require a relative or other designated representative to sign a contract to provide facility payment from your income or resources, without your representative incurring personal financial liability;
- charge you, if you are eligible for Medicaid, only for those items and services you requested and received that are not specified at the time of admission as included in the nursing home's basic services;
- solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to you provided that the contribution is not a condition of admission, expedited admission, special room assignment or continued stay in the facility.

LIFE AT THE FACILITY

The resident may always exercise his rights as a citizen or resident of the United States and New York State, including his right to:

- vote, with arrangements made by the facility;
- action for damages or other relief for deprivations or infringements of your right to adequate and proper treatment and care;
- exercise your civil and religious liberties, including the right to independent personal decisions and knowledge of available choices;
- be free from verbal, sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints except those restraints authorized in accordance with nursing home minimum standards; this includes but is not limited to doctor's orders, specified time periods, close monitoring, periodic reevaluation of need, conferring with a family member or designated representative and documentation in the record;
- meet with and participate in activities of social, religious and community groups at your discretion.





Resident Council

- participate in the established resident council at the facility.

Access to Information

- examine the results of the most recent federal or state survey of the facility including any statement of deficiencies, any plan of correction in effect with respect to the facility and any enforcement actions taken by the New York State Department of Health (Results must be made available for examination in a place readily accessible to you.);
- receive information from agencies acting as residents' advocates and be given the opportunity to contact these agencies;
- request, or have a designated representative request, and be provided information concerning your specific assignment to a resident classification category for purposes of linking reimbursement to the intensity of your care;
- inspect upon verbal or written notice within 24 hours records pertaining to you, and with two working days notice purchase and receive photocopies of such records. The cost of reproduction may not exceed 75 cents per page.



Grievances

- voice grievances without discrimination or reprisal;
- prompt resolution of your grievances including those with respect to the behavior of other residents;
- recommend changes in policies and services to facility staff and/or outside representatives, free of interference, coercion, discrimination, restraint or reprisal from the facility.

Privacy

- locked storage space upon request in your room;

- share a room with your spouse, relative or partner when the spouse, relative or partner lives in the same facility and you both consent to the arrangement;
- be assured of privacy for visits when a spouse, relative or partner resides outside the facility;
- retain, store securely and use personal possessions, including furnishings, and appropriate clothing, as space permits provided the rights or health and safety of other residents are not infringed.

Food/Nutrition

- receive kosher food or food products, upon request, when as a matter of religious belief you wish to observe, Jewish dietary laws.

Work/Services

- perform services only when: (1) you can safely perform the services; (2) the facility documents the need or desire for work in your plan of care; (3) the plan specifies the nature of the services performed and whether the services are voluntary or paid (Compensation for the paid services must be at or above prevailing rates and you must agree to the work arrangement described in your plan of care.);
- refuse to perform services for the facility.

The facility must:

- furnish you with a written description of your legal rights including: (1) a description of how the facility protects your personal funds; (2) a statement telling you that you may file a complaint with the facility or the New York State Department of Health concerning resident abuse, neglect, mistreatment and misappropriation of your property in the facility (This statement must include the name, address and telephone number of the office established by the New York State Department of Health to receive complaints and of the New York State Office for the Aging Ombudsman Program.);

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- record and periodically update the address and telephone number of your designated representative or interested family member;
- provide immediate access to you by: (1) any representative of the U.S. Secretary of Health and Human Services; (2) any representative of the New York State Department of Health; (3) your own doctor; (4) Ombudsmen who are duly certified and designated by the New York State Office for the Aging; (5) representatives of the New York State Commission on Quality of Care for the Mentally Disabled (which protects and advocates for developmentally disabled individuals; and mentally ill individuals); and (6) other individuals who are visiting, with your consent, subject to reasonable restrictions and your right to deny or withdraw consent at any time;
- provide reasonable access to you by an entity or individual that provides health, social, legal or other services, subject to your right to deny or withdraw consent at any time;
- encourage your voluntary choice of activities and assist you in the participation of all social activities in which you wish to engage by: (1) transporting you to and from in-house activities as needed; (2) encouraging you to participate in and helping maintain your involvement in community, religious and/or social activities including the organization of trips outside the facility; (3) post a copy of the monthly activities schedule and provide you with a copy upon request.



Resident Council

- Encourage you to participate in the facility's resident council and encourage you to take part in decision-making processes and make recommendations that could improve the quality of life in the facility;
- ensure that you receive resident council meeting notices and that you are given assistance in transport to and from meetings, if such assistance is needed;

- describe and promote the function and organization of the resident council to maximize your participation;
- after consultation with the resident council, assign to the council a staff person who is acceptable to the members of the resident council;
- ensure that members of the governing body make themselves available to hold meetings with representatives of the resident council at least three times a year to discuss matters contained in a jointly developed agenda;
- ensure that the Quality Assessment and Assurance Committee provide consultation on at least a quarterly basis with the resident council to seek recommendations on quality improvements.

Access to Information

- promptly notify you when there is: (1) a change in your room assignment (This requires prior notice unless you requested or agreed to the change, your medical condition requires a more immediate change, an emergency situation develops or there is a need to alter your treatment significantly. Then, you must be immediately informed, your doctor consulted and your designated representative or an interested family member notified.); (2) a change in roommate assignment (This must be acceptable, where possible, to all affected residents.); (3) a change in resident rights under federal or state law or regulations as specified in the Official Compilation of Codes, Rules and Regulations of the State of New York;
- inform you of the facility's visiting hour policies, which are to be in compliance with the New York State Department of Health mandates for residential health care facilities (at least 10 hours within a 24-hour period, including at least two meal periods) and which must be posted.





Grievances

- inform you upon your admission about the complaint and recommendation procedure;
- ensure that a method is in place to respond within 21 days to your complaints or grievances and recommendations.

Privacy

- arrange for you to share a room with your spouse, relative or partner when you are both residents in the facility and both consent to the shared arrangement;
- ensure privacy for visits by your spouse, relative or partner if they do not reside in the facility;
- provide you space for storage and placement of your personal possessions as follows: (1) possessions may include some furnishings if such meet government fire safety and health code regulations; (2) if sufficient storage space is not available in your room, your possessions may be stored in other areas of the facility (if such space is available) at the option of the facility or the facility will help you find other space;
- provide a lockable drawer and/or locked storage area (upon your request) in your room or within your immediate area. Staff should help you store your possessions.

Food/Nutrition

- provide kosher food or food products prepared in accordance with orthodox Jewish religious requirements when, as a matter of religious belief, you wish to observe Jewish dietary laws;
- offer substitute menu items at your request;
- provide assistance with eating and special eating equipment or assistive devices and utensils if needed.

CLINICAL CARE AND TREATMENT

The resident has the right to:

- adequate and appropriate medical care, including nursing, rehabilitation therapies, social work, dental and other professional services for which you have been assessed to show need;
- be fully informed by a doctor in a language or a form that you can understand (using an interpreter when necessary) of your total health status, including but not limited to your medical condition including diagnosis, prognosis and treatment plan;
- ask questions about your medical condition and have the questions answered;
- refuse to participate in experimental research;
- a second opinion if you disagree with the diagnosis or treatment being provided; you or your designated representative may visit a consultant (You may have to pay for this visit);
- appoint someone you trust, such as a family member or close friend, to be your health care agent to decide about treatment if you lose the ability to decide for yourself;
- provide advance directives, such as a living will or other verbal or written instructions, about important health care decisions, like the withdrawal of life-sustaining treatment;
- refuse medication and treatment and discharge yourself from the facility should you so choose, after being fully informed and understanding the probable consequences of such actions;
- choose a personal attending doctor from among those who agree to abide by all applicable federal and state regulations and who are permitted to practice in the facility;
- be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect your well-being;





- participate in planning your care and treatment or changes in your care and treatment;
- self-administer drugs only if the facility's interdisciplinary medical team has determined that this practice is safe.

The facility must:

- use chemical and physical restraints only if necessary for medical reasons and ordered by your doctor and, except in an emergency situation, obtain your consent or the consent of your designated representative who has legal authority to give such consent;
- inform you of the name, office address, telephone number and specialty of the doctor responsible for your personal care;
- inform you prior to admission that your doctor or dentist must be affiliated with the facility in order to practice there;
- promptly respond to requests by your personal attending doctors or dentists to be approved to attend to you;
- inform you (except in a medical emergency) immediately and consult your physician and designated representative or an interested family member when there is: (1) an accident involving you that results in injury; (2) a significant improvement in your physical, mental or psychosocial status, in accordance with generally accepted standards of care and services; (3) a need to alter treatment significantly; (4) a decision to transfer or discharge you from the facility;
- discharge you from the facility, should you so choose, after fully informing you of the probable consequences of such action;
- provide you with information, a Health Care Proxy form and assistance to decide about advance directives and designation of a health care agent;
- provide you with all information you may need to give informed consent for a "Do Not Resuscitate" order and comply with the New York State provisions regarding orders not to resuscitate;

- furnish to you, upon your request, a copy of the New York State Department of Health brochure entitled “Do Not Resuscitate Orders: A Guide for Patients and Families.”

PRIVACY AND CONFIDENTIALITY

The resident has the right to:

- privacy and confidentiality of your personal and clinical records which reflect accommodations, medical treatment, written and telephone communications, personal care, associations and communications with people of your choice, visits and meetings of family and resident groups;
- private meeting space for you and your family;
- approve or refuse the release of personal and clinical records to any individual outside the facility except when you are transferred to another health care facility or when record release is required by law or health insurance company contract;
- privacy in written communications, including the right to send and receive unopened mail promptly;
- access to stationery, postage and writing implements (at your own expense);
- regular access to the use of a telephone where calls can be made without being overheard and which is wheelchair accessible and usable by residents who are visually and hearing impaired.

The facility must:

- ensure that you have privacy in accommodations, medical treatment, personal care, visits and meetings of family, friends and resident groups;
- ensure that your mail is delivered to you unopened and that it is sent out unopened;





- provide you, upon your request, with stationery, postage and writing materials (to be paid for by you) and assist you in reading or writing mail if you so request;
- provide you, upon your request, with access to a telephone (and assist you in its use) that is private and, if necessary, wheelchair accessible and equipped for the hearing impaired or the visually impaired.
- instruct all staff and assure that all staff adhere to its instructions to fully honor and maintain your right to approve or refuse to approve release of your personal and clinical records to any outside individual;
- instruct all staff involved in your care to maintain your personal and clinical record in the strictest privacy. Staff must restrict discussion of your medical, mental and psychosocial problems to appropriate forums, only, for example, at facility interdisciplinary care team conferences or unit conferences. Staff must not discuss or otherwise divulge your medical, mental and psychosocial problems with any other resident, even though discussion may be initiated by the other resident.

FINANCES

The resident has the right to:

- at the time of admission, a written copy and explanation of the facility's basic services;
- manage your own financial affairs or, in writing, authorize the facility to manage your personal finances in accordance with specific requirements, such as those governing resident interest-bearing accounts;
- refuse to deposit your personal funds with the facility;
- request your complete financial record and have the facility provide it to you within one business day;

- request an assessment which will determine nonexempt resources of you and your spouse at the time of admission, and will give your spouse, if he or she is living in the community, an equitable share of resources which cannot be used to pay for your care as you spend down to Medicaid eligibility levels.

The facility must:

- provide the following information to you if you are entitled to Medicaid benefits: (1) a list of the items and services included in nursing home services under the New York State plan and for which you may not be charged (see glossary for included services); (2) a list of any other items and services that the facility offers and for which you may be charged, and the amount of charges for those items and services (The facility must inform you when changes are made in these lists.);
- inform you verbally and in writing, before the time of admission, and periodically when changes occur during your stay, of services available in the facility and of the charges for those services, including any charges for services not covered by sources of third-party payment or by the facility's basic daily rate;
- prominently display written information in the facility and provide verbal and written information to residents and potential residents about: (1) how to apply for and use Medicare and Medicaid benefits, and (2) how to receive refunds for previous payments covered by such benefits;
- not require you to deposit your personal funds with the facility;
- refund promptly any amount or proportion of repayment in excess of the amount used for services in the event you leave the facility prior to the end of the prepayment period for reasons beyond your control;
- deposit your funds in excess of \$50 in an interest-bearing account separate from any of the facility's operating accounts;





- upon request, provide an assessment which will determine nonexempt resources of you and your spouse at the time of admission, and will give your spouse, if he or she is living in the community, an equitable share of resources which cannot be used to pay for your care as you spend down to Medicaid eligibility levels;
- upon request, inform you or your designated representative about funds held in account through quarterly statements;
- make available to you or your designated representative your individual financial record within one business day of a request;
- upon your death, convey within 30 days your personal funds deposited with the facility and a final accounting of those funds to the individual or probate jurisdiction administering your estate;
- if you are a private pay resident, give you a 30-day notice for any change in rate and, if you request, provide you with documentation explaining any additional charges.

TRANSFER AND DISCHARGE

The resident has the right to:

- be notified before transfer or discharge;
- file an appeal to the state in response to an involuntary transfer or discharge;
- examine your own medical records;
- a pretransfer on-site appeal determination under the auspices of the New York State Department of Health, provided that you appealed the transfer or discharge within 15 days of the notice, except in cases involving imminent danger to others;
- remain in the facility pending the appeal determination;
- a post-transfer hearing within 30 days of transfer if you did not request a hearing prior to transfer;





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- return to the first available bed in the facility if you win the appeal;

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- the name, address and telephone number of the State Long Term Care Ombudsman and the State Commission on Quality of Care for the Mentally Disabled;
- a bed hold or readmission after hospitalization, pursuant to facility policy and law;
- a bed hold if you have been involuntarily transferred until after the appeal decision is reached.

The facility may transfer or discharge you:

- Only after the interdisciplinary care team, in consultation with you, determines: (1) that the transfer or discharge is necessary for your welfare and your needs cannot be met after reasonable attempts at accommodation at the facility; (2) that the transfer or discharge is appropriate because your health has improved sufficiently to the point where you no longer need the services provided by the facility; (3) your health or safety or the health or safety of other individuals in the facility would otherwise be endangered and all reasonable alternatives to transfer or discharge have been explored and have failed to safely address the problem;
- when you have failed to pay for a stay at the facility after having received reasonable and appropriate notice from the facility or to have paid under Medicare, Medicaid or third-party insurance (For failure to pay, such transfer or discharge is permissible only if: (1) a charge is not in dispute; (2) no appeal of a denial of benefits is pending, or (3) funds for payment are available, but you refuse to cooperate with the facility in obtaining them.);

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- when it discontinues operation and has received approval of its plan of closure from the New York State Department of Health.



The facility must:

- inform you and your designated representative verbally and in writing about bed reservation and readmission regulations at the time of your admission to the facility and again at the time of your transfer for any reason and/or for therapeutic leave;
- readmit you, if you have been in residence at least 30 days, as soon as the first bed becomes available in a semi-private room if you were hospitalized, transferred or discharged on therapeutic leave without being given a bed hold when you require the services provided by the facility and are eligible for Medicaid;
- completely document in your clinical records the reasons for the move when the facility transfers or discharges you;
- before the facility transfers or discharges you, it must notify you and a family member or designated representative both verbally and in writing (in a language and manner you understand) of the transfer or discharge and the reasons for it;
- include in its written notice of transfer or discharge to you the following: (1) a statement about your right to appeal to the state Department of Health, including the telephone number for the department that can initiate an appeal; (2) the name, address and telephone number of the State Long Term Care Ombudsman; (3) if you are mentally ill or developmentally disabled, the mailing address and telephone number of the Commission on Quality of Care for the Mentally Disabled, the agency that can advocate for you;
- provide its notice of transfer or discharge to you at least 30 days prior to the date of transfer or discharge or, provide its notice to you as soon as practicable before transfer or discharge charge when: (1) the health or safety of individuals in the facility would be endangered; (2) your health improves sufficiently to allow a more immediate transfer or discharge; (3) an immediate transfer or discharge is required by your urgent medical needs; or (4) the transfer or discharge is made in compliance with your request;



- provide sufficient preparation and orientation to you to ensure safe and orderly transfer or discharge from the facility, including an opportunity for you to participate in deciding where to go;
- assist you in appealing a transfer or discharge by: (1) seeing to it that you contact the appropriate state agency; (2) calling upon your doctor and the facility staff to help you in examining and reviewing your medical records; (3) making certain that the on-site pretransfer/predischarge appeal determination is held (This on-site determination is held provided that you have appealed the transfer or discharge within 15 days of the notice, except in cases involving imminent danger to others in the facility.);
- prove that the transfer was necessary and the discharge plan appropriate;
- cooperate with the presiding officer of the appeal determination to obtain medical and psychosocial consultations. While you remain in the facility, the New York State Department of Health conducts a review and renders a decision on the appeal within 15 days of the request. If an appeal decision rendered after discharge finds the transfer or discharge to be inappropriate, the facility must readmit you prior to admitting any other person. The facility may arrange an involuntary transfer before a hearing in cases involving imminent danger to others in the facility. In these cases, the facility must hold your bed until after the hearing decision has been rendered, as required by New York State law. If the transfer is found to be appropriate and you are a private pay resident, you may be charged for the time the bed was held. If the transfer is found to be inappropriate, the facility must readmit you to your bed on a priority basis.

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REQUIRED POSTINGS

Following is a list of information that must be posted in the facility:

- Summary of residents' rights and all rules and regulations governing resident conduct and responsibilities;



- Information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits;
- Information about advance directives or written instructions concerning important health care decisions, health care proxy and designation of a health care agent;
- A schedule of the facility's current monthly activities;
- The facility's visiting hours;
- The date and time the facility will assess residents to determine the intensity of their needs;
- The date and time the New York State Department of Health auditors will visit the facility to review patient information; **R**
- A statement that each resident has the right to know to which reimbursement category he or she has been assigned by the facility;
- The person to contact in the facility for more information about resident assessment categories and reimbursement;
- A New York State Division of Human Rights nondiscrimination regulatory poster (must be displayed in the Admissions Office). **R**

GLOSSARY

Advance Directives — A verbal or written instruction plan in advance of incapacitating illness or injury which ensures that the resident's wishes about treatment will be followed for a short or long period of time. This includes but is not limited to a health care proxy, an order not to resuscitate recorded in the resident's medical record and a living will.

Basic Services — Those services included in the daily rate. At the time of admission, a written copy of the following description of basic services should be made available to all residents:

- the daily, weekly or monthly rate;

- board, including therapeutic or modified diets, as prescribed by a doctor;
- lodging: a clean, healthful, sheltered environment, properly outfitted;
- 24 hours-per-day nursing care;
- the use of all equipment, medical supplies and modalities used in the care of nursing home residents, including but not limited to catheters, hypodermic syringes and needles, irrigation outfits, dressings and pads, etc.
- fresh bed linen, as required, changed at least twice weekly, including sufficient quantities of necessary bed linen or appropriate substitutes changed as often as required for incontinent residents;
- hospital gowns or pajamas as required by the clinical condition of the resident, unless the resident, family member or designated representative elects to furnish them, and laundry services for these and other launderable personal clothing items;
- general household medicine cabinet supplies, including but not limited to nonprescription medications, materials for routine skin care, oral hygiene, care of hair etc., except when specific items are medically indicated and prescribed for exceptional use for a specific resident;
- assistance and/or supervision, when required, with activities of daily living, including but not limited to toileting, bathing, feeding and assistance with getting from place to place;
- services, in the daily performance of their assigned duties, by members of the nursing home staff concerned with resident care;
- use of customarily stocked equipment, including but not limited to crutches, walkers, wheelchairs or other supportive equipment, including training in their use when necessary, unless such item is





prescribed by a doctor for regular and sole use by a specific resident;

- activities program, including but not limited to a planned schedule of recreational, motivational, social and other activities together with the necessary materials and supplies to make the resident's life more meaningful;
- social services as needed;
- physical therapy, occupational therapy, speech pathology services, audiology services and dental services, on either a staff or fee-for-services basis, as prescribed by a doctor, administered by or under the direct supervision of a licensed and currently registered physical therapist, occupational therapist, speech pathologist, qualified audiologist or registered dentist.

Designated Representative — The individual or individuals designated to receive information and to assist and/or act on behalf of a particular resident to the extent permitted by New York State law. This is not the same as a health care agent. The designation occurs by a court of law if sought; by the resident if he or she has the capacity to make such a designation; or by family members and other parties who have an interest in the well-being of the resident. The name of the designated representative must be noted in the resident's clinical record at the facility.

The designated representative: (1) receives any written and verbal information required to be provided to the resident if the resident lacks the capacity to understand or make use of the information, and receives any information required to be provided to both the resident and the Designated Representative; (2) participates (to the extent authorized by New York State law) in decisions and choices regarding the care, treatment and well-being of the resident if such resident lacks the capacity to make decisions and choices.

Governing Body — The policymaking body of the facility, the board of directors or trustees of the facility or the proprietor or proprietors of a nursing home.

Health Care Agent — Someone appointed by the resident he or she trusts to decide about treatment if the resident becomes unable to decide for himself or herself. The resident has the right to appoint someone by filling out a form called a Health Care Proxy. These forms should be available at the facility.

Health Care Proxy — A document that delegates the authority to another individual known as a Health Care Agent to make health care decisions on behalf of the resident when that resident is incapacitated.



Nursing Home — A facility (subject to Article 28 of the New York State Public Health Law) providing lodging for 24 or more consecutive hours to three or more nursing home residents who are not related to the facility operator by marriage or by blood, who need regular nursing services or other professional services, but who do not need the services of a general hospital.

Quality Assessment and Assurance Committee — A committee consisting of at least the facility administrator (or designee), director of nursing, a doctor designated by the facility, at least one member of the governing body (not affiliated with the nursing home in an employment or contractual capacity) and at least three other facility staff members, meeting at least quarterly to oversee the effectiveness of monitoring, assessing and problem-solving activities for purposes of initiating quality improvements designed to advance the quality of life, care and services in the facility. The committee meets quarterly with the resident council to seek recommendations or quality improvements.



Resident — An individual who has been admitted to and who resides in a nursing home (facility) and is entitled to receive care, treatment and services required by New York State Law.





Resident Care Unit (or nursing unit) — A designated area that includes a group of resident rooms and adequate supporting rooms, areas, facilities, services and personnel providing nursing care and management of residents that is planned, organized, operated and maintained to function as a unit so as to encourage the efficient delivery of resident services and effective observation of and communication with facility residents.

Resident Council — The organization created by residents of a nursing home and recognized by the facility as the group that represents the interests of its members.

Sponsor — The agency or people, other than the resident, responsible in whole or in part for the financial support of the resident, including the costs of care in the facility.



Adult Home Residents' Rights



NYS SOCIAL SERVICES LAW: 487.5 RESIDENT PROTECTIONS



Each operator shall adopt a statement of the rights and responsibilities of residents, and shall treat each resident in accord with the principles contained in the statement. A copy of the statement of rights issued by the department shall be posted in a conspicuous location in a public area of the facility.

At a minimum, the operator shall afford each resident the following rights and protections:

- A resident's civil rights shall not be infringed.
- A resident's religious liberties shall not be infringed.
- A resident shall have the right to have private, written and verbal communications with anyone of his/her choice.
- A resident shall have the right to present grievances on his/her behalf, or the behalf of other residents, to the administrator or facility staff, the department or other government officials or any other parties without fear of reprisal.
- A resident shall have the right to join with other residents or individuals to work for improvements in resident care.
- A resident shall have the right to manage his or her own financial affairs.
- A resident shall have the right to privacy in his/her own room and in caring for personal needs.
- A resident shall have the right to confidential treatment of personal, social, financial and health records.



- A resident shall have the right to receive courteous, fair and respectful care and treatment at all times, and shall not be physically, mentally or emotionally abused or neglected in any manner.
- A resident shall not be restrained nor locked in a room at any time.
- A resident shall have the right to receive and send mail or any other correspondence unopened and without interception or interference.
- A resident shall be permitted to leave and return to the facility and grounds at reasonable hours.
- A resident shall not be obliged to perform work.
- A resident shall not be permitted, or obliged, to provide any operator or agent of the operator any gratuity in any form for services provided or arranged for in accord with Law or regulation.
- A resident must have the right to have his/her version of the events leading to an accident or incident in which such resident is involved included on the reports of such accidents or incidents.

RESIDENT ORGANIZATIONS

The operator shall encourage and assist residents to organize and maintain committees, councils or such other self-governing body as the residents may choose.

Specifically, the operator shall assure that the residents' organization:

- meets as often as the membership deems necessary;
- is chaired and directed by the residents; and
- may meet with any member of the supervisory staff, provided that reasonable notice of the request is given to such staff;

The operator shall appoint a staff person to act as an advisor to the residents' organization, who shall serve as a Liaison between the organization and administration to report all problems, issues and suggestions discussed by the residents which require administrative action.

Additionally, the operator shall assure that any complaints, problems or issues reported by the residents' organization to the designated staff person or administration be addressed, and that a written report addressing the problems, issues or suggestions be sent to the organization.



GRIEVANCES AND RECOMMENDATIONS

The operator shall develop written procedures and shall establish and maintain a system to receive and respond to grievances and recommendations for change or improvement in facility operations and programs which are presented by residents.

The system shall include:

- Identification of staff to whom grievances and recommendations may be made;
- procedures to submit grievances and recommendations which also include a procedure for confidential treatment of grievances and recommendations if requested;
- procedures for evaluation and the initiation of action or resolution which are timely and protect the rights of those involved; and
- procedures for informing residents of action and resolution.

The operator shall post the procedures for the submission of grievances and recommendations, including the identity of staff to whom the grievances and recommendations may be addressed.

SOCIAL SERVICES LAW



The Social Services Law provides residents of an adult home the right:

- to receive courteous, fair and respectful care and treatment, and not be physically, mentally or emotionally abused or neglected in any manner.



- to exercise your civil rights and religious liberties, and to make personal decisions, including your choice of physician, and to have the assistance and encouragement of the operator in exercising these rights and liberties.
- to have private written and verbal communications or visits with anyone of your choice, or to deny or end such communications or visits.
- to send and receive mail or any correspondence unopened and without interception or interference.
- to present grievances or recommendations on your own behalf or the behalf of other residents to the administrator or facility staff, the Department of Social Services, other government officials, or any other parties without fear of reprisal or punishment.
- to join other residents or individuals inside or outside the facility to work for improvement in resident care.
- to confidential treatment of personal, social, financial and health records.
- to have privacy in treatment and in caring for personal needs.
- to receive a written statement (admission agreement) of the services regularly provided by the facility operator, those additional services which will be provided if you need or ask for them and the charges (if any) of these additional services.
- to manage your own financial affairs.
- to not be coerced or required to perform work; and if you work, to receive fair compensation from the operator of the facility.
- to have security for any personal possessions if stored by the operator.
- to have recorded on the facility's accident or incident report your version of the events leading to the accident or incident.



- to object if the operator terminates your admission agreement against your will.



In addition, Social Services Law and regulations provide other protections. These important protections include requirements that the operator, administrator, staff or other agents of the operator:

- provide to you, before or at the time of the admission interview, a copy of the Admission Agreement, a copy and explanation of resident rights and protections, the listing of Legal Services and Advocacy agencies made available by the Department, and a copy of any facility rules relating to resident activities, and tell you of your obligation to comply with these rules.
- provide to you at least 30 days advance notice of any change in the facility's rate or charges for supplemental services.
- provide to you, your next of kin or representative of your choice at least 30 days advance notice of the facility's intention to terminate your admission agreement. The notice must indicate: the reason for termination; the date of termination; that you have a right to object to the termination of the agreement and discharge; that if you object, you may remain in the facility and the operator, in order to terminate, must begin a court proceeding; that you will not be discharged against your will unless the court rules in favor of the operator. At the time of notice, the operator must give you a list of agencies providing free legal and advocacy services within the local area of the facility.
- allow you to end your admission agreement, subject to the conditions for notice established in your admission agreement.
- guarantee that you keep, from any Supplemental Security Income (SSI) or Home Relief (HR) payments you receive, a personal needs allowance to buy any items the operator is not required to provide to you.
- offer each SSI or HR recipient the opportunity to keep personal allowance funds in an account maintained by the facility.





- maintain complete records on your personal allowance account and upon request, or at least quarterly, show or give you a statement which has all deposits, withdrawals, and the current balance in the account.
- allow you to review upon request Department-issued inspection reports, excluding any confidential attachments, for the most recent two year period.
- encourage and assist residents in organizing and maintaining committees, councils or such other self-governing body as the residents may choose.
- maintain a system for accepting and responding to grievances and recommendations for changes or improvement in facility operations.
- allow you privacy in your room, subject to reasonable access by facility staff.
- allow you privacy in caring for personal needs.
- neither physically restrain you nor lock you in a room at any time.
- allow you to leave and return to the facility at reasonable hours.
- neither require from you nor accept from you any gratuity (i.e. tip or gift) in any form.



Family Type Homes Residents' Rights



The Social Services Law provides residents of family type homes the right:

- to receive courteous, fair and respectful care and treatment, and not be physically, mentally or emotionally abused or neglected in any manner.
- to exercise your civil rights and religious liberties, and to make personal decisions, including your choice of physician, and to have the assistance and encouragement of the operator in exercising these rights and liberties.
- to have private written and verbal communications or visits with anyone of your choice, or to deny or and such communications or visits.
- to authorize those family members and other adults who will be given priority to visit, consistent with your ability to receive visitors.
- to send and receive mail or any correspondence unopened and without interception or interference.
- to present grievances or recommendations on your own behalf or on behalf of other residents to the operator, the Department of Social Services, other government officials, or any other parties without fear of reprisal or punishment.
- to join other residents or individuals inside or outside the home to work for improvement in resident care.
- to confidential treatment of personal, social, financial and health records.
- to have privacy in treatment and in caring for personal needs.





- to receive a written statement (Admission Agreement) of the services regularly provided by the operator, those additional services which will be provided if you need or ask for them and the charges (if any) for these additional services.
- to manage your own financial affairs.
- to not be coerced or required to perform work; and if you work, to receive fair compensation from the operator.
- to have recorded on the home's accident or incident report your version of the events leading to the accident or incident.

In addition, Social Services Law provides that residents are responsible for obeying all reasonable rules of the home and for respecting the personal rights and property of the other residents in the home.



Social Services Law and regulations also provide other protections. These important protections include requirements that the operator or an agent of the operator:

- provide to you, before or at the time of admission interview, a copy of the Admission Agreement, a copy and explanation of resident rights and protections, and a copy of any home rules relating to resident activities, and tell you of your obligation to comply with these rules.
- provide to you at least 30 days written notice of any change in the home's rate or charges for supplemental services.
- provide to you, your next of kin or representative of your choice at least 30 days written notice of the operator's intention to terminate your Admission Agreement. The notice must indicate the reason for termination and the date of termination.
- allow you to terminate your Admission Agreement, subject to the conditions for notice established in your Admission Agreement.
- guarantee that you keep, from any Supplemental Security Income (SSI) or Home Relief (HR) payments you receive a personal needs

allowance to buy any items the operator is not required to provide to you.

- offer each SSI or HR recipient the opportunity to keep personal allowance funds in a home-maintained account.
- maintain complete records on your personal allowance account and upon request, or at least quarterly, show or give you a statement which has all deposits, withdrawals, and the current balance in the account.
- allow you to review upon request the local department of social services inspection report, excluding any confidential attachments, for the most recent two-year period.
- maintain a system for accepting and responding to grievances and recommendations for changes or improvement in home operations.
- allow you privacy in your room, subject to reasonable access by operator.
- allow you privacy in caring for personal needs.
- neither physically restrain you nor lock you in a room at any time.
- allow you to leave and return to the home at reasonable hours.
- neither require from you nor accept from you any gratuity (i.e. tip or gift) in any form.
- may not threaten or coerce you to work in the home against your will.
- must provide you with fair compensation for any work you voluntarily perform, subject to the approval of the local department of social services.





Resident Councils

Resident councils provide a vehicle for resident participation in decision making and for residents to voice their participation in grievances and resolve differences. The Nursing Home Reform Law (OBRA '87) and federal regulations require nursing homes to assist in the establishment of resident councils. The resident council movement is growing into a vital force where it has had support. It has made valuable contributions to decisions within facilities as well as at the state and national policy level. This is particularly true where coalitions of resident councils have helped individual councils to function more effectively and have provided a voice for residents on policy issues.



The role of residents has become more important under the Centers for Medicare & Medicaid Services' (CMS, formerly known as the Health Care Financing Administration (HCFA)), Survey Process which is based on resident interviews. CMS's surveyor guidelines instruct the surveyor to meet with the facility resident council during the survey and to have a representative of the residents at the survey exit conference.



Resident councils need tremendous support within and outside the facility to work effectively as mechanisms for resident participation.

- The administration must be committed to regular input from residents.
- Resident councils need staff time and resources.
- Residents need training in assertiveness, communication, and leadership skills.
- Staff need training to understand the importance of resident input and to teach them interpersonal skills to promote input in daily activities and care.

A resident's ability to participate in decisions affecting his daily life and to exercise control over his life is critical to his well-being. There are several components to this right.

1. The right to personal autonomy, each individual's need and right to control the most intimate aspects of her personal being as much as possible.
2. The right to affect the environment in which an individual lives, the services and activities available, the ambience, the feeling, to help shape one's home.
3. The right to voice concerns and seek change away from negative situations toward more positive ones.

Residents have varying abilities to exercise these levels of rights, but caregivers have a responsibility to make these rights available and to "encourage and assist" residents in their exercise of these rights. Participation in a resident council is an excellent way for a resident to exercise these rights.

An Ombudsman might help stimulate and support the development of resident councils in facilities without councils. Where a resident council exists, an Ombudsman might:

- strengthen the functioning of the council if appropriate;
- provide information and education on a variety of topics;
- meet with the council regarding problems within the facility.

The Ombudsman must remember that the resident council is the residents' group and should meet their needs, not be shaped to serve the Ombudsman's needs.





Family Councils

A family council in a nursing home or board and care home is a consumer group, composed of the friends and relatives of the home's residents.¹ Although each family council is unique, a typical council:

- has 5 to 10 active members;
- meets monthly at the home;
- is run by relatives and friends or residents;
- has an adviser (usually a staff person of the home) who assists the council but is not considered a member); and
- has a variety of activities.

PURPOSES

The main purposes for having a family council are:

- to protect and improve the quality of life in the home and within the long term care system as a whole, and
- to give families a voice in decisions that affect them and their resident loved ones.

Beyond these general goals, specific purposes exist, such as:

- support for families;
- education and information;
- services and activities for residents;
- joint activities for families and residents;
- action on concerns and complaints; and
- legislative action, and many others.

Purposes vary greatly from council to council, depending upon the interests of council members. A general set of purposes should be agreed upon when a council is new and revised as the goals and interests of members change.

BENEFITS

Effective family councils benefit families, residents, and the homes in which they are involved.

Families benefit in many ways. No one knows as well as a family member how difficult it is to place a loved one in a nursing home. Even after placement, families continue to share similar concerns, problems, and questions.

Family councils allow families to give each other the support, encouragement, and information they need. Council involvement helps to resolve feelings of helplessness because families have a channel to express their concerns and ideas and a way to work for positive change. Being involved in issues that affect their resident loved ones, families feel less isolated and powerless.

Studies have repeatedly shown residents receive better care in homes where families and friends visit and are involved. In addition, family involvement makes a nursing or board and care home more like a home and less like an institution. Because family council activities benefit all residents, even those who do not have concerned families are helped. Family involvement also protects residents who are physically or mentally unable to voice their concerns and needs for themselves.

The nursing or board and care home also benefit. Councils allow administration and staff to deal directly with family concerns and ideas, to convey needed information to families, and to decrease resident and staff turnover by creating workable ways to deal with family dissatisfaction.





Many administrators have shared instances when they were unaware that families had a concern, but because the concern was raised at a council meeting it was easily resolved. Administrators have also shared examples of problems that were solved because of the good ideas or assistance of a council.

Family councils also give families, administrators, and staff opportunities to get to know each other better and to establish meaningful lines of communication.

A FAMILY COUNCIL IS NOT:

Family Night: Family Night is a name used in many homes for occasional educational or social functions planned and hosted by nursing home staff for families and friends of the home's residents. While these programs may be beneficial, they are not substitutes for family councils.

A Resident Council: Many homes have resident councils. It may seem, at first glance, that the two groups are the same. Combining the home's resident and family councils into one group may even be considered. However, this ignores the fact that residents and their families have different interests, needs, and abilities. Combined resident/family councils are usually dominated by the families, who are quicker and better able, in many cases, to express themselves. Residents and families need their own councils, geared to their special situations and interests.

A Volunteer Group or Auxiliary: Occasionally, a family council will be started to meet a need within the home. Family councils provide many valuable services to residents, but they must never be replacements for adequate staff. Also, a council should not provide items or services that the home is required by law to provide.

An Ombudsman might provide information and encouragement to family councils. There might be occasions when the family council and the Ombudsman can jointly work on problem resolution.



MODULE 2 ENDNOTES

1. Excerpted from A Family Council Manual by the Minnesota Alliance of Health Care Consumers.

