

COMBINED FEDERAL AND STATE BILL OF RIGHTS

Safe Environment

The resident has a right to a safe, clean, comfortable and homelike environment, including but not limited to receiving treatment and supports for daily living safely. The facility must provide—

1. A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible.
 - A. This includes ensuring that the resident can receive care and services safely and that the physical layout of the facility maximizes resident independence and does not pose a safety risk.
 - B. The facility shall exercise reasonable care for the protection of the resident's property from loss or theft.
 - C. *The nursing or boarding care home must either maintain a central locked depository or provide individual locked storage areas in which residents may store their valuables for safekeeping. The nursing or boarding care home may, but is not required to, provide compensation for a replacement of lost or stolen items.*
2. Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;
3. Clean bed and bath linens that are in good condition;
4. Private closet space in each resident room;
5. Adequate and comfortable lighting levels in all areas;

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6. Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81° F; and
7. For the maintenance of comfortable sound levels.

Grievances

1. The resident has the right to voice grievances to the facility or other agency or entity that hears grievances without discrimination or reprisal and without fear of discrimination or reprisal. Such grievances include those with respect to care and treatment which has been furnished as well as that which has not been furnished, the behavior of staff and of other residents; and other concerns regarding their LTC (long-term care) facility stay.
2. The resident has the right to and the facility must make prompt efforts by the facility to resolve grievances the resident may have, in accordance with this paragraph.
3. The facility must make information on how to file a grievance or complaint available to the resident.
4. The facility must establish a grievance policy to ensure the prompt resolution of all grievances regarding the residents' rights contained in this paragraph. Upon request, the provider must give a copy of the grievance policy to the resident. The grievance policy must include:
 - A. Notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances orally (meaning spoken) or in writing; the

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right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed, that is, his or her name, business address (mailing and email) and business phone number; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding his or her grievance; and the contact information of independent entities with whom grievances may be filed, that is, the pertinent State agency, Quality Improvement Organization, State Survey Agency, and State Long Term Care Ombudsman program, or protection and advocacy system (see pages 55-57);

- B. Identifying a Grievance Official who is responsible for overseeing the grievance process, receiving and tracking grievances through to their conclusion; leading any necessary investigations by the facility; maintaining the confidentiality of all information associated with grievances, for example, the identity of the resident for those grievances submitted anonymously; issuing written grievance decisions to the resident; and coordinating with state and federal agencies as necessary in light of specific allegations;
- C. As necessary, taking immediate action to prevent further potential violations of any resident right while the alleged violation is being investigated;
- D. Immediately reporting all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone

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furnishing services on behalf of the provider, to the administrator of the provider;

- E. Ensuring that all written grievance decisions include the date the grievance was received, a summary statement of the resident's grievance, the steps taken to investigate the grievance, a summary of the pertinent findings or conclusions regarding the resident's concern(s), a statement as to whether the grievance was confirmed or not confirmed, any corrective action taken or to be taken by the facility as a result of the grievance, and the date the written decision was issued;
- F. Taking appropriate corrective action in accordance with State law if the alleged violation of the residents' rights is confirmed by the facility or if an outside entity having jurisdiction, such as the State Survey Agency, Quality Improvement Organization, or local law enforcement agency confirms a violation of any of these residents' rights within its area of responsibility; and
- G. Maintaining evidence demonstrating the results of all grievances for a period of no less than 3 years from the issuance of the grievance decision.

Contact with External Entities

A facility must not prohibit or in any way discourage a resident from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal or state health department employees, including representatives of the Office of the State Long-Term Care

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Ombudsman, and any representative of the agency responsible for the protection and advocacy system for individuals with mental disorder regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action.

Freedom from Abuse, Neglect, and Exploitation

1. The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.
2. The facility must:
 - A. Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;
 - B. Ensure that the resident is free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident's medical symptoms. When the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.
3. *Residents shall be free from maltreatment as defined in the Minnesota Vulnerable Adults Protection Act. "Maltreatment" means conduct described in Section 626.5572, Subdivision 15, or the intentional and nontherapeutic infliction of*

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physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

Restraints

1. *Competent nursing home residents, family members of residents who are not competent, and legally appointed conservators, guardians, and health care agents as defined under section 145C.01, have the right to request and consent to the use of a physical restraint in order to treat the medical symptoms of the resident.*
2. *Upon receiving a request for a physical restraint, a nursing home shall inform the resident, family member, or legal representative of alternatives to and the risks involved with physical restraint use. The nursing home shall provide a physical restraint to a resident only upon receipt of a signed consent form authorizing restraint use and a written order from the attending physician that contains statements and determinations regarding medical symptoms and specifies the circumstances under which restraints are to be used.*
3. *A nursing home providing a restraint under paragraph 2 must:*
 - A. *document that the procedures outlined in that paragraph have been followed;*
 - B. *monitor the use of the restraint by the resident; and*
 - C. *periodically, in consultation with the resident, the family, and the attending physician, reevaluate the resident's need for the restraint.*

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4. *A nursing home shall not be subject to fines, civil money penalties, or other state or federal survey enforcement remedies solely as the result of allowing the use of a physical restraint as authorized in this subdivision. Nothing in this subdivision shall preclude the commissioner from taking action to protect the health and safety of a resident if:*
 - A. *the use of the restraint has jeopardized the health and safety of the resident; and*
 - B. *the nursing home failed to take reasonable measures to protect the health and safety of the resident.*
5. *For purposes of this subdivision, "medical symptoms" include:*
 - A. *a concern for the physical safety of the resident; and*
 - B. *physical or psychological needs expressed by a resident. A resident's fear of falling may be the basis of a medical symptom.*
 - C. *A written order from the attending physician that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical necessity of the physical restraint.*
6. *When determining nursing facility compliance with state and federal standards for the use of physical restraints, the commissioner of health is bound by the statements and determinations contained in the attending physician's order regarding medical symptoms. For purposes of this order, "medical symptoms" include the request by a competent resident, family member of a resident who is not competent, or legally appointed conservator, guardian, or health care*

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agent as defined under section 145C.01, that the facility provide a physical restraint in order to enhance the physical safety of the resident.

Admission, Transfer, and Discharge

1. Admissions policy.

A. The facility must establish and implement an admissions policy.

B. The facility must—

a. Not request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable state, federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and

b. Not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

c. Not request or require residents or potential residents to waive potential facility liability for losses of personal property

C. The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial

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liability, to provide facility payment from the resident's income or resources.

- D. In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,—
- a. A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term “nursing facility services” so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and
 - b. A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.
- E. States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

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- F. A nursing facility must disclose and provide to a resident or potential resident prior to time of admission, notice of special characteristics or service limitations of the facility.
- G. A nursing facility that is a composite distinct part must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations.

2. Equal access to quality care.

- A. A facility must establish, maintain and implement identical policies and practices regarding transfer and discharge, and the provision of services for all individuals regardless of source of payment;
- B. The facility may charge any amount for services furnished to non-Medicaid residents unless otherwise limited by state law and consistent with the notice requirement describing the charges; and
- C. The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

3. Transfer and discharge—

Residents shall not be arbitrarily transferred or discharged. Residents must be notified, in writing, of the proposed discharge or transfer and its justification no later than 30 days before discharge from the nursing or boarding care home and seven days before transfer to another room within

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individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

B. Documentation. When the facility transfers or discharges a resident under any of the circumstances specified, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.³

a. Documentation in the resident's medical record must include:

- The basis for the transfer.
- The specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

b. The documentation required must be made by—

- The resident's physician when transfer or discharge is necessary under paragraph 3 A a. first and second bullet of this section; and
- A physician when transfer or discharge is necessary under paragraph 3 A a. third and fourth bullets.

³ Transfer/Discharge item 3B will be implemented on 11/28/17.

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- e. information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
 - f. The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
 - g. For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities; and
 - h. For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.
- F. Changes to the notice. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.
- G. Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be

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provided in a form and manner that the resident can understand.

- H. Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents.
 - I. Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part are subject to the requirements and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.
4. Notice of bed-hold policy and return—
- A. Notice before transfer. Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies—
 - a. The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;
 - b. The reserve bed payment policy in the state plan, if any;

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- c. The nursing facility's policies regarding bed-hold periods, which must be consistent with this section, permitting a resident to return; and
 - d. The information specified in this section.
 - B. Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and the resident representative written notice which specifies the duration of the bed-hold policy.
- 5. Permitting residents to return to facility.
 - A. A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.
 - a. A resident, whose hospitalization or therapeutic leave exceeds the bed- hold period under the State plan, returns to the facility to their previous room if available or immediately upon the first availability of a bed in a semi- private room if the resident
 - Requires the services provided by the facility; and
 - Is eligible for Medicare skilled nursing facility services or Medicaid nursing facility services.
 - b. If the facility determines that a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility must comply with the requirements as they apply to discharges.

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B. Readmission to a composite distinct part. When the facility to which a resident returns is a composite distinct part, the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of return, the resident must be given the option to return to that location upon the first availability of a bed there.

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Resources

Advocacy

KEPRO

(Medicare Beneficiary and Family Centered Care Quality Improvement Organization)

5201 West Kennedy Boulevard, Suite 900

Tampa, Florida 33609

Attention: Medicare Beneficiary Complaints

855-408-8557

beneficiary.complaints@hcqis.org

MID-MINNESOTA LEGAL AID/MINNESOTA DISABILITY LAW CENTER

(Protection and Advocacy Systems)

430 First Avenue North, Suite 300

Minneapolis, MN 55401-1780

1-800-292-4150 intake number

mndlc@mylegalaid.org

OFFICE OF OMBUDSMAN FOR LONG-TERM CARE

PO Box 64971

St. Paul, MN 55164-0971

1-800-657-3591 or 651-431-2555 (metro)

MBA.OOLTC@state.mn.us

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OFFICE OF OMBUDSMAN FOR MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

121 7th Place East

Metro Square Building

St. Paul, MN 55101-2117

1-800-657-3506 or 651-757-1800 (metro)

Ombudsman.mhdd@state.mn.us

SENIOR LINKAGE LINE

(Aging and Disability Resource Center)

Minnesota Board on Aging

PO Box 64976

St. Paul, MN 55155

1-800-333-2433

senior.linkage@state.mn.us

Medicaid

MINNESOTA DEPARTMENT OF HUMAN SERVICES

(Medicaid Fraud and Abuse-payment issues)

Surveillance and Integrity Review Services

PO Box 64982

St Paul, MN 55164-0982

1-800-657-3750 or 651-431-2650 (metro)

DHS.SIRS@state.mn.us

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Regulatory

CENTERS FOR MEDICAID/MEDICARE SERVICES (CMS)

Region V

233 North Michigan Ave, Suite 600

Chicago, IL 60601

312-353-9810

ROCHIORA@cms.hhs.gov

MINNESOTA ADULT ABUSE REPORTING CENTER (MAARC)

Department of Human Services

PO Box 64976

St. Paul, MN 55164-0976

1-844-880-1574

DHS.AdultProtection@state.mn.us

MINNESOTA DEPARTMENT OF HEALTH

Office of Health Facility Complaints

PO Box 64970

St. Paul MN 55164-0971

1-800-369-7994 or 651-201-4201 (metro)

health.ohfc-complaints@state.mn.us

MINNESOTA DEPARTMENT OF HEALTH

Health Regulation Division

PO Box 64900

St. Paul, MN 55164-0900

651-201-4101

health.fpc-licensing@state.mn.us

www.health.state.mn.us

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