



**Office of
Ombudsman for
Long-Term Care**

Mailing address: PO Box 64971, St. Paul, MN 55164-0971
Location: Elmer L. Andersen Human Services Building • 540 Cedar St.
St. Paul, MN 55101
(651) 431-2555 • (800) 657-3591 • FAX (651) 431-7452

May 14, 2020

To: Minnesota Long Term Care Setting Resident or Resident Representative:
From: Minnesota Office of Ombudsman for Long-Term Care

Due to presence of COVID in long term care settings, Governor Walz has directed that all individuals who reside and work in nursing homes and assisted living settings be offered testing for COVID-19.

Each Nursing Home and Assisted Living shall maintain documentation and verification that testing has been completed including documentation related to any refusals to test by residents and staff.

Federal Nursing Home Rights

Federal Regulation 42 CFR §483.10 (c) (6) for Skilled Nursing Facilities provides that a resident has the “right to request, or refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and formulate an advance directive.” The Centers for Medicare and Medicaid Services (CMS) has not waived this right during COVID-19 pandemic.

Home Care Bill of Rights (MN has not waived the following rights during COVID-19 pandemic)

MN Home Care Bill of Rights under Minnesota Statutes 144A.44 provides that a resident has the right to refuse treatment. See applicable rights:

Subdivision 1. Statement of rights.

(a) A client who receives home care services in the community or in an assisted living facility licensed under chapter 144G has these rights:

(2) receive care and services according to a suitable and up-to-date plan, and subject to accepted health care, medical or nursing standards and person-centered care, to take an active part in developing, modifying, and evaluating the plan and services;

(5) refuse services or treatment;



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Resident Representative:

If a resident has a legal representative due to a competency or capacity issue, the right to refuse treatment may be extended to the legal representative. However, resident refusal to test should be honored by the long-term care facility. It is permissible to continue to encourage the resident in a respectful manner to gain voluntary acceptance of testing for COVID-19.

Best Practices When Testing

Suggested Best Practices when a resident or resident representative refuses testing even when he or she may lack capacity or competence include:

- Never restrain or hold a resident down to administer the test as this may cause physical and psychological abuse.
- Honor the initial refusal and tell the resident in a polite manner you will come back to talk to him or her later about the test.
- Without harassing the resident, continue to encourage the resident to attempt testing. Suggested incentives could be offered or a favored staff person may be helpful to interact with the resident.
- Offer comfort measures to keep the resident calm such as a blanket and assure the resident the procedure will be completed with minimal pain to the best of your ability. Explain there may be discomfort.

If the resident and/or legal representative has questions about their rights please encourage them to contact the Office of Ombudsman for Long-Term Care. Contact the office of Ombudsman for Long-Term Care by phone: Intake Line: Metro (651) 431-2555 or toll-free (800) 657-3591, FAX: (651)431-7452. Or e-mail: MBA.OOLTC@state.mn.us

Respectfully,
Cheryl Hennen, State Long-Term Care Ombudsman