

Federal Bill of Rights

FOR RESIDENTS IN MEDICARE/MEDICAID CERTIFIED SKILLED NURSING FACILITIES OR NURSING FACILITIES

All residents in long-term care facilities have rights guaranteed to them under Federal and State law. These rights exist under Federal and State law and apply to residents of facilities certified under the Medicaid or Medicare programs.

No facility¹ can require a resident to waive these rights as a condition of admission or continued stay.

Resident Rights

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility:

1. A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident.
2. The facility must provide equal access to quality care regardless of diagnosis, severity of condition, or payment source. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all residents regardless of payment source.

¹ In this document, the word "facility" refers to nursing home, boarding care home, certified skilled nursing facility (SNF) or certified nursing facility (NF).

Exercise of Rights

The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

1. The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.
2. The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights.
3. In the case of a resident who has not been adjudged incompetent by the State court, the resident has the right to designate a representative, in accordance with State law and any legal surrogate so designated may exercise the resident's rights to the extent provided by State law. The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.
 - A. The resident representative has the right to exercise the resident's rights to the extent those rights are delegated to the resident representative.
 - B. The resident retains the right to exercise those rights not delegated to a resident representative, including the right to revoke a delegation of rights, except as limited by State law.
4. The facility must treat the decisions of a resident representative as the decisions of the resident to the extent required by the court or delegated by the resident.

5. The facility shall not extend the resident representative the right to make decisions on behalf of the resident beyond the extent required by the court or delegated by the resident.
6. If the facility has reason to believe that a resident representative is making decisions or taking actions that are not in the best interests of a resident, the facility shall report such concerns.
7. In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident devolve to and are exercised by the resident representative appointed under State law to act on the resident's behalf. The court-appointed resident representative exercises the resident's rights to the extent judged necessary by a court of competent jurisdiction.
 - A. In the case of a resident representative whose decision-making authority is limited by State law or court appointment, the resident retains the right to make those decisions outside the representative's authority.
 - B. The resident's wishes and preferences must be considered in the exercise of rights by the representative.
 - C. To the extent practicable, the resident must be provided with opportunities to participate in the care planning process.

Planning and Implementing Care

The resident has the right to be informed of, and participate in, his or her treatment, including:

1. The right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.

2. The right to participate in the development and implementation of his or her person-centered plan of care, including but not limited to:
 - A. The right to participate in the planning process, including the right to identify individuals or roles to be included in the planning process, the right to request meetings and the right to request revisions to the person centered plan of care.
 - B. The right to participate in establishing the expected goals and outcomes of care, the type, amount, frequency, and duration of care, and any other factors related to the effectiveness of the plan of care.
 - C. The right to be informed, in advance, of changes to the plan of care.
 - D. The right to receive the services and/or items included in the plan of care.
 - E. The right to see the care plan, including the right to sign after significant changes to the plan of care.
3. The facility shall inform the resident of the right to participate in his or her treatment and shall support the resident in this right. The planning process must—
 - A. Facilitate the inclusion of the resident and/or resident representative.
 - B. Include an assessment of the resident's strengths and needs.
 - C. Incorporate the resident's personal and cultural preferences in developing goals of care.

4. The right to be informed, in advance, of the care to be furnished and the type of care giver or professional that will furnish care.
5. The right to be informed in advance, by the physician or other practitioner or professional, of the risks and benefits of proposed care, of treatment and treatment alternatives or treatment options and to choose the alternative or option he or she prefers.
6. The right to request, refuse, and/ or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive.
7. The right to self-administer medications if the interdisciplinary team has determined that this practice is clinically appropriate.
8. Nothing in this paragraph should be construed as the right of the resident to receive the provision of medical treatment or medical services deemed medically unnecessary or inappropriate.

Choice of Attending Physician

The resident has the right to choose his or her attending physician.

1. The physician must be licensed to practice, and
2. If the physician chosen by the resident refuses to or does not meet requirements specified in this part, the facility may seek alternate physician participation to assure provision of appropriate and adequate care and treatment.
3. The facility must ensure that each resident remains informed of the name, specialty, and way of contacting the physician and other primary care professionals responsible for his or her care.

4. The facility must inform the resident if the facility determines that the physician chosen by the resident is unable or unwilling to meet requirements specified in this part and the facility seeks alternate physician participation to assure provision of appropriate and adequate care and treatment. The facility must discuss the alternative physician participation with the resident and honor the resident's preferences, if any, among options.
5. If the resident subsequently selects another attending physician, who meets the requirements specified in this part, the facility must honor that choice.

Respect and Dignity

The resident has a right to be treated with respect and dignity, including:

1. The right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.
2. The right to retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.
3. The right to reside and receive services in the facility with reasonable accommodation of resident needs and preferences except when to do so would endanger the health or safety of the resident or other residents.
4. The right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

5. The right to share a room with his or her roommate of choice when practicable, when both residents live in the same facility and both residents consent to the arrangement.
6. The right to receive written notice, including the reason for the change, before the resident's room or roommate in the facility is changed.
7. The right to refuse to transfer to another room in the facility, if the purpose of the transfer is:
 - A. to relocate a resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or
 - B. to relocate a resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.
 - C. solely for the convenience of staff.
8. A resident's exercise of the right to refuse transfer does not affect the resident's eligibility or entitlement to Medicare or Medicaid benefits.

Self-Determination

The resident has the right to and the facility must promote and facilitate resident self- determination through support of resident choice, including but not limited to the following rights:

1. The resident has a right to choose activities, schedules (including sleeping and waking times), health care and providers of health care

services consistent with his or her interests, assessments, plan of care and other applicable provisions of this part.

2. The resident has the right to make choices about aspects of his or her life in the facility that are significant to the resident.
3. The resident has a right to interact with members of the community and participate in community activities both inside and outside the facility.
4. The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.
 - A. The facility must provide immediate access to any resident by—
 - a. Any representative of the Secretary (Centers for Medicare and Medicaid Services, (CMS)),
 - b. Any representative of the State,
 - c. Any representative of the Office of the State Long-Term Care Ombudsman,
 - d. The resident's individual physician,
 - e. Any representative of the protection and advocacy systems, as designated by the state and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000,
 - f. Any representative of the agency responsible for the protection and advocacy system for individuals with a mental disorder; and

- g. The resident representative.
- B. The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
- C. The facility must provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;
- D. The facility must provide 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;
- E. The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation.
- F. A facility must meet the following requirements:
 - a. Inform each resident (or resident representative, where appropriate) of his or her visitation rights and related facility policy and procedures, including any clinical or safety restriction or limitation on such rights, consistent with the requirements of this subpart, the reasons for the restriction or limitation, and to whom the restrictions apply, when he or she is informed of his or her other rights under this section.

- b. Inform each resident of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse (including a same-sex spouse), a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.
 - c. Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.
 - d. Ensure that all visitors enjoy full and equal visitation privileges consistent with resident preferences.
5. The resident has a right to organize and participate in resident groups in the facility.
- A. The facility must provide a resident or family group, if one exists, with private space; and take reasonable steps, with the approval of the group, to make residents and family members aware of upcoming meetings in a timely manner.
 - B. Staff, visitors, or other guests may attend resident group or family group meetings only at the respective group's invitation.
 - C. The facility must provide a designated staff person who is approved by the resident or family group and the facility and who is responsible for providing assistance and responding to written requests that result from group meetings.
 - D. The facility must consider the views of a resident or family group and act promptly upon the grievances and recommendations of such groups concerning issues of resident care and life in the facility.

- a. The facility must be able to demonstrate their response and rationale for such response.
 - b. This should not be construed to mean that the facility must implement as recommended every request of the resident or family group.
6. The resident has a right to participate in family groups.
7. The resident has a right to have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents in the facility.
8. The resident has a right to participate in other activities, including social, religious, and community activities that do not interfere with the rights of other residents in the facility.
9. The resident has a right to choose to or refuse to perform services for the facility and the facility must not require a resident to perform services for the facility. The resident may perform services for the facility, if he or she chooses, when—
 - A. The facility has documented the resident’s need or desire for work in the plan of care;
 - B. The plan specifies the nature of the services performed and whether the services are voluntary or paid;
 - C. Compensation for paid services is at or above prevailing rates; and
 - D. The resident agrees to the work arrangement described in the plan of care.

10. The resident has a right to manage his or her financial affairs. This includes the right to know, in advance, what charges a facility may impose against a resident's personal funds.
 - A. The facility must not require residents to deposit their personal funds with the facility. If a resident chooses to deposit personal funds with the facility, upon written authorization of a resident, the facility must act as a fiduciary of the resident's funds and hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in this section.
 - B. Deposit of funds.
 - a. The facility must deposit any residents' personal funds in excess of \$100 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.) The facility must maintain a resident's personal funds that do not exceed \$100 in a non-interest bearing account, interest-bearing account, or petty cash fund.
 - b. Residents whose care is funded by Medicaid: The facility must deposit the residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.) The facility must maintain personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

- C. Accounting and records. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
 - a. The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
 - b. The individual financial record must be available to the resident through quarterly statements and upon request.
- D. Notice of certain balances. The facility must notify each resident that receives Medicaid benefits—
 - a. When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person.
 - b. That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.
- E. Conveyance upon discharge, eviction, or death. Upon discharge, eviction, or death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the resident, or in the case of death, the individual or probate jurisdiction administering the resident's estate, in accordance with State law.
- F. Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to CMS, to

assure the security of all personal funds of residents deposited with the facility.

Services Included in Medicare or Medicaid Payment

The facility must not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid.)

1. During the course of a covered Medicare or Medicaid stay, facilities must not charge a resident for the following categories of items and services:
 - A. Nursing services.
 - B. Food and Nutrition services.
 - C. An activities program.
 - D. Room/bed maintenance services.
 - E. Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to:
 - hair hygiene supplies, comb, brush
 - bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection
 - razor, shaving cream

- toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss
- moisturizing lotion
- tissues, cotton balls, cotton swabs
- deodorant
- incontinence care and supplies, sanitary napkins and related supplies
- towels, washcloths, hospital gowns
- over the counter drugs
- hair and nail hygiene services
- bathing assistance
- basic personal laundry

F. Medically-related social services.

G. Hospice services elected by the resident and paid for under the Medicare Hospice Benefit or paid for by Medicaid under a state plan.

2. Items and services that may be charged to residents' funds. General categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if they are not required to achieve the goals stated in the resident's care plan, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

- Telephone, including a cellular phone.
- Television/radio, personal computer or other electronic device for personal use.

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- Personal comfort items, including smoking materials, notions and novelties, and confections.
- Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.
- Personal clothing.
- Personal reading matter.
- Gifts purchased on behalf of a resident.
- Flowers and plants.
- Cost to participate in social events and entertainment outside the scope of the activities program.
- Non-covered special care services such as privately hired nurses or aides.
- Private room, except when therapeutically required (for example, isolation for infection control).
- Specially prepared or alternative food requested instead of the food and meals generally prepared by the facility.

The facility may not charge for special foods and meals, including medically prescribed dietary supplements, ordered by the resident's physician, physician assistant, nurse practitioner, or clinical nurse specialist.

When preparing foods and meals, a facility must take into consideration residents' needs and preferences and the overall cultural and religious make-up of the facility's population.

3. Requests for items and services.
 - A. The facility can only charge a resident for any non-covered item or service if such item or service is specifically requested by the resident.
 - B. The facility must not require a resident to request any item or service as a condition of admission or continued stay.
 - C. The facility must inform, orally and in writing, the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

Information and Communication

1. The resident has the right to be informed of his or her rights and of all rules and regulations governing resident conduct and responsibilities during his or her stay in the facility.
2. The resident has the right to access personal and medical records pertaining to him or herself.
 - A. The facility must provide the resident with access to personal and medical records pertaining to him or herself, upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, within 24 hours (excluding weekends and holidays); and

- B. The facility must allow the resident to obtain a copy of the records or any portions thereof (including in an electronic form or format when such records are maintained electronically) upon request and 2 working days advance notice to the facility. The facility may impose a reasonable, cost-based fee on the provision of copies, provided that the fee includes only the cost of:
- Labor for copying the records requested by the individual, whether in paper or electronic form;
 - Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and
 - Postage, when the individual has requested the copy be mailed.
3. With the exception of information described in paragraphs (2) and (11) of this section, the facility must ensure that information is provided to each resident in a form and manner the resident can access and understand, including in an alternative format or in a language that the resident can understand. Summaries that translate information described in paragraph (2) of this section may be made available to the patient at their request and expense in accordance with applicable law.
4. The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands, including:
- A. A description of the manner of protecting personal funds.

- B. A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment of resources.
- C. A list of names, addresses (mailing and email), and telephone numbers of all pertinent State regulatory and informational agencies, resident advocacy groups and the Medicaid Fraud Control Unit (see pages 25-26); and
- D. A statement that the resident may file a complaint with the Minnesota Office of Health Facility Complaints concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the advance directives requirements and requests for information regarding returning to the community.
 - a. Information and contact information for State and local advocacy organizations (see pages 25-26);
 - b. Information regarding Medicare and Medicaid eligibility and coverage (see pages 25-26);
 - c. Contact information for the Aging and Disability Resource Center; or other No Wrong Door Program (see pages 25-26);
 - d. Contact information for the Medicaid Fraud Control Unit (see pages 25-26);
 - e. Information and contact information for filing grievances or complaints concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the

- advance directives requirements and requests for information regarding returning to the community (see pages 2526).
5. The facility must post, in a form and manner accessible and understandable to residents, and resident representatives:
 - A. A list of names, addresses (mailing and email), and telephone numbers of all pertinent State agencies and advocacy groups, such as the State Survey Agency, the State licensure office, adult protective services where state law provides for jurisdiction in long-term care facilities, the Office of the State Long-Term Care Ombudsman program, the protection and advocacy network, home and community based service programs, and the Medicaid Fraud Control Unit (see pages 25-26); and
 - B. A statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the advance directives requirements and requests for information regarding returning to the community.
 6. The resident has the right to have reasonable access to the use of a telephone, including TTY and TDD services, and a place in the facility where calls can be made without being overheard. This includes the right to retain and use a cellular phone at the resident's own expense.
 7. The facility must protect and facilitate that resident's right to communicate with individuals and entities within and external to the facility, including reasonable access to:

- A. A telephone, including TTY and TDD services;
 - B. The internet, to the extent available to the facility; and
 - C. Stationery, postage, writing implements and the ability to send mail.
8. The resident has the right to send and receive mail, and to receive letters, packages and other materials delivered to the facility for the resident through a means other than a postal service, including the right to:
- A. Privacy of such communications consistent with this section; and
 - B. Access to stationery, postage, and writing implements at the resident's own expense.
9. The resident has the right to have reasonable access to and privacy in their use of electronic communications such as email and video communications and for Internet research.
- A. If the access is available to the facility.
 - B. At the resident's expense, if any additional expense is incurred by the facility to provide such access to the resident.
 - C. Such use must comply with state and federal law.
10. The resident has the right to—
- A. Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility; and
 - B. Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

11. The facility must—
 - A. 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.
 - B. Have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years, and any plan of correction in effect with respect to the facility, available for any individual to review upon request; and
 - C. Post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.
 - D. The facility shall not make available identifying information about complainants or residents.
12. The facility must comply with the requirements for Advance Directives.
 - A. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, formulate an advance directive.
 - B. This includes a written description of the facility's policies to implement advance directives and applicable State law.
 - C. Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met.
 - D. If an adult individual is incapacitated at the time of admission and is unable to receive information or articulate whether or not he or

she has executed an advance directive, the facility may give advance directive information to the individual's resident representative in accordance with State law.

- E. The facility is not relieved of its obligation to provide this information to the individual once he or she is able to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.
- F. Personnel provide basic life support, including CPR, to a resident requiring such emergency care prior to the arrival of emergency medical personnel and subject to related physician orders and the resident's advance directives.

13. The facility must display in the facility written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

Notification of changes

- 1. A facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with his or her authority, the resident representative(s), when there is—
 - A. An accident involving the resident which results in injury and has the potential for requiring physician intervention;
 - B. A significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or

psychosocial status in either life- threatening conditions or clinical complications);

- C. A need to alter treatment significantly (that is, a need to discontinue or change an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or
 - D. A decision to transfer or discharge the resident from the facility.
2. When making notification under paragraph (1) of this section, the facility must ensure that all pertinent information is available and provided upon request to the physician.
 3. The facility must also promptly notify the resident and the resident representative, if any, when there is—
 - A. A change in room or roommate assignment.
 - B. A change in resident rights under Federal or State law or regulations.
 - C. The facility must record and periodically update the address (mailing and email) and phone number of the resident representative(s).

Admission

1. Admission to a composite distinct part². A facility that is a composite distinct part must disclose in its admission agreement its physical configuration, including the various locations that comprise the

² A composite distinct part must be physically distinguishable from the larger institution and fiscally separate for cost reporting.

composite distinct part, and must specify the policies that apply to room changes between its different locations.

2. The facility must provide a notice of rights and services to the resident prior to or upon admission and during the resident's stay.
 - A. The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility.
 - B. The facility must also provide the resident with the State-developed notice of Medicaid rights and obligations, if any.
 - C. Receipt of such information, and any amendments to it, must be acknowledged in writing.
3. The facility must inform each Medicaid-eligible resident, in writing, at the time of admission to the nursing facility and when the resident becomes eligible for Medicaid of—
 - A. The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;
 - B. Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and
 - C. Inform each Medicaid-eligible resident when changes are made to the items and services.
4. The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including

any charges for services not covered under Medicare/ Medicaid or by the facility's per diem rate.

- A. Where changes in coverage are made to items and services covered by Medicare and/or by the Medicaid State plan, the facility must provide notice to residents of the change as soon as is reasonably possible.
- B. Where changes are made to charges for other items and services that the facility offers, the facility must inform the resident in writing at least 60 days prior to implementation of the change.
- C. If a resident dies or is hospitalized or is transferred and does not return to the facility, the facility must refund to the resident, resident representative, or estate, as applicable, any deposit or charges already paid, less the facility's per diem rate, for the days the resident actually resided or reserved or retained a bed in the facility, regardless of any minimum stay or discharge notice requirements.
- D. The facility must refund to the resident or resident representative any and all refunds due the resident within 30 days from the resident's date of discharge from the facility.
- E. The terms of an admission contract by or on behalf of an individual seeking admission to the facility must not conflict with the requirements of these regulations.

Privacy and Confidentiality

The resident has a right to personal privacy and confidentiality of his or her personal and medical records.

1. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.
2. The facility must respect the residents right to personal privacy, including the right to privacy in his or her oral (that is, spoken), written, and electronic communications, including the right to send and promptly receive unopened mail and other letters, packages and other materials delivered to the facility for the resident, including those delivered through a means other than a postal service.
3. The resident has a right to secure and confidential personal and medical records.
 - A. The resident has the right to refuse the release of personal and medical records except as provided under applicable federal or state laws.
 - B. The facility must allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident's medical, social, and administrative records in accordance with State law.

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.
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.
6. Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81° F.
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 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 25-26);
 - 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 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 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 reevaluation of the need for restraints.

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 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.
- 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—

A. Facility requirements—

- a. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—
 - The transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility;
 - 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;
 - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
 - The health of individuals in the facility would otherwise be endangered;

- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non- payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
 - The facility ceases to operate.
- b. The facility may not transfer or discharge the resident while the appeal is pending, when a resident exercises his or her right to appeal a transfer or discharge notice, unless the failure to discharge or transfer would endanger the health or safety of the resident or other 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.

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

- 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.
- c. Information provided to the receiving provider must include a minimum of the following:
- Contact information of the practitioner responsible for the care of the resident.
 - Resident representative information including contact information.
 - Advance Directive information.
 - All special instructions or precautions for ongoing care, as appropriate.
 - Comprehensive care plan goals.
 - All other necessary information, including a copy of the resident’s discharge summary, and any other documentation, as applicable, to ensure a safe and effective transition of care.
- C. Notice before transfer. Before a facility transfers or discharges a resident, the facility must—
- a. Notify the resident and the resident’s representative(s) of the transfer or discharge and the reasons for the move in writing

and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

- b. Record the reasons for the transfer or discharge in the resident's medical record; and
- c. Include in the notice the items described in this section.

D. Timing of the notice.

- a. Except as specified, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.
- b. Notice must be made as soon as practicable before transfer or discharge when—
 - The safety of individuals in the facility would be endangered;
 - The health of individuals in the facility would be endangered;
 - The resident's health improves sufficiently to allow a more immediate transfer or discharge;
 - An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph; or
 - A resident has not resided in the facility for 30 days.

E. Contents of the notice. The written notice specified in this section must include the following:

- a. The reason for transfer or discharge;
- b. The effective date of transfer or discharge;
- c. The location to which the resident is transferred or discharged;

- d. A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and
 - 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 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;
 - 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.

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.

Resources

Advocacy

MEDICARE BENEFICIARY AND FAMILY CENTERED CARE QUALITY IMPROVEMENT ORGANIZATION

LIVANTA LLC

BFCC-QIO Program

10820 Guilford Road, Suite 202

Annapolis Junction, MD 20701-1105

1-888-524-9900, TTY 1-888-985-8775

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

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

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

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

To obtain this information in a different format, call: 651-201-4101.