

## **OBRA - RESIDENT RIGHTS - IN A SKILLED NURSING FACILITY (SNF)**

**The Nursing Home Reform Amendments of OBRA 1987 require that nursing facilities promote and protect the rights of each resident. The resident rights must be displayed in the nursing facility along with a contact number for the state Long Term Care Ombudsman (a third-party resident advocate).**

### **The general goals of the law are:**

- (1) Quality of Life: The law requires nursing homes to care for the residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident. A new emphasis placed on dignity, choice and self-determination for nursing home residents.
- (2) Provision of Services and Activities: The law requires that each nursing home is to provide services and activities to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a written plan of care which... is initially prepared, with participation to the extent practicable of the resident or the resident's legal representative;
- (3) Participation in Facility Administration: The law makes resident and advocate participation a criteria for assessing a facility's compliance with administration requirements; and
- (4) Assuring Access to the Ombudsman Program: The law grants immediate access by ombudsmen to residents and reasonable access, in accordance with state law, by ombudsmen to records; requires facilities to inform residents how to contact ombudsmen to voice complaints or in the event of a transfer or discharge from the facility; requires state agencies to share inspection results with ombudsmen.

### **Specific Resident Rights:**

1. Rights to Self-Determination: Nursing home residents have the right: to choose their personal physician; to full information, in advance, and participation in planning and making any changes in their care and treatment; to reside and receive services with reasonable accommodation by the facility of individual needs and preferences; to voice grievances about care or treatment they do or do not receive without discrimination or reprisal, and to receive prompt response from the facility; and to organize and participate in resident groups (and their families have the right to organize family groups) in the facility.
2. Personal and Privacy Rights: Nursing home residents have the right: to participate in social, religious and community activities as they

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choose; to privacy in medical treatment, accommodations, personal visits, written and telephone conversations and meetings of resident and family groups; and to confidentiality of personal and clinical records.

3. Rights Regarding Abuse and Restraints: Nursing home residents have the right: to be free from physical or mental abuse, corporal punishment, involuntary seclusion or disciplinary use of restraints; to be free of restraints used for the convenience of the staff rather than the well-being of the residents; to have restraints used only under written physician's orders to treat a resident's medical symptoms and ensure his/her safety and the safety of others; and to be given psychopharmacologic medication only as ordered by a physician as a part of a written plan of care for a specific medical symptom, with annual review for appropriateness by an independent, external expert.

4. Rights to Information: Nursing homes must, upon request provide residents with the latest inspection results and any plan of correction submitted by the facility; notify residents in advance of any plans to change their rooms or roommate; inform residents of their rights upon admission and provide a written copy of the rights, including their rights regarding personal funds and their right to file a complaint with the state survey agency; inform residents in writing, at admission and throughout their stay, of the services available under the basic rate and of any extra charges for extra services, including, for Medicaid residents, a list of services covered by Medicaid and those for which there is an extra charge; and prominently display and provide oral and written information for residents about how to apply for and use Medicaid benefits and how to receive a refund for previous private payments that Medicaid will pay retroactively.

5. Rights to Visits: The nursing home must: permit immediate visits by a resident's personal physician and by representatives from the licensing agency and the Ombudsman Program; permit immediate visits by a resident's relatives, with the resident's consent; permit visits subject to reasonable restriction for others who visit with the resident's consent; and permit ombudsmen to review resident's clinical records if a resident grants permission.

6. Transfer and Discharge Rights: Nursing homes must permit each resident to remain in the facility and must not transfer or discharge the resident unless the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met by the facility appropriately because the resident's health has improved such that the resident no longer needs nursing home care; the health or safety of other residents is endangered; or the resident has failed, after reasonable notice, to pay an

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allowable facility charge for an item or service provided upon the resident request; and the facility ceases to operate.

Notice must be given to residents and their representatives before transfer: at least 30 days in advance, or as soon as possible if more immediate changes in health require more immediate transfer.

Content: reasons for transfer, the resident's right to appeal the transfer, and the name, address and phone number of the Ombudsman Program and protection and advocacy programs for mentally ill and developmentally disabled; and

Returning to the Facility: the right to request that a resident's bed be held, including information about how many days Medicaid will pay for the bed to be held and the facility's bed-hold policies, and the right to return to the next available bed if Medicaid bed-holding coverage lapses.

Orientation: A facility must prepare and orient residents to ensure safe and orderly transfer or discharge from the facility.

7. Protection of Personal Funds: A nursing home must not require residents to deposit their personal funds with the facility; and if it accepts written responsibility for resident's funds: keep funds over \$50 in an interest bearing account, separate from the facility account; keep other funds available in a separate account or petty cash fund; keep a complete and separate accounting of each resident's funds, with a written record of all transactions, available for review by residents and their representatives; notify Medicaid residents when their balance account comes within \$200 of the Medicaid limit and the effect of this on their eligibility; upon a resident's death, turn funds over to the resident's trustee; purchase a surety bond to secure resident's funds in its keeping; and do not charge a resident for any item or service covered by Medicaid, specifically including routine personal hygiene items and services.

8. Protection Against Medicaid Discrimination: Nursing homes must: establish and maintain identical policies and practices regarding transfer, discharge and the provision of services required under Medicaid for all individuals regardless of source of payment; not require residents to waive their rights to Medicaid, and must provide information about how to apply for Medicaid; not require a third party to guarantee payment as a condition of admission or continued stay; and not charge, solicit, accept or receive gifts, money, donations or other consideration as a precondition for admission or for continued stay for persons eligible for Medicaid.