

Residents' Rights



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Residents' Rights

a) Residents have the rights enumerated in this section and the facility shall ensure that these rights are not violated. The facility shall establish and implement written policies and procedures which include these rights and shall make a copy of these policies available to the resident and to any representative of the patient. The policies shall be accessible to the public upon request. The policies shall have the right:

(1) To be fully informed, as evidenced by the resident's written acknowledgment prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing resident conduct.

(2) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care, including the identification of medical, nursing and psychosocial needs and the planning of related services

(4) To consent to or to refuse any treatment or procedure or participation in experimental research.

(5) To receive all information that is material to an individual resident's decision concerning whether to accept or refuse any proposed treatment or procedure. The disclosure of material information for administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability to regain use of a normal bodily function shall include the disclosure of information listed in Section 72528(b)

(6) To be transferred or discharged only for medical reasons, or the resident's welfare or that of other residents or for nonpayment for his or her stay, and to be given reasonable advance notice to ensure orderly transfer or discharge. Such actions shall be documented in the resident's health record.

(7) To be encouraged and assisted throughout the period of stay in exercise rights as a resident and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and / or outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination or reprisal.

(8) To manage personal financial affairs, or to be given at least a quarterly accounting of financial transactions made on the resident's behalf should the facility accept written delegation of this responsibility subject to the provisions of 22 California Code of Regulations Section 72529.

(9) To be free from mental and physical abuse,

(10) To be assured confidential treatment of financial and health records and to approve or refuse their release, except as authorized by law.

(11) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs.

(12) Not to be required to perform services for the facility that are not included for therapeutic purposes in the resident's plan of care.

(13) To associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened.

(14) To meet with others and participate in activities of social, religious and community groups.

(15) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the resident or other residents,

(16) If married, to be assured privacy for visits by the resident's spouse and if both are residents in the facility, to be permitted to share a room.

(17) To have daily visiting hours established

Informed Consent Regulations Pursuant to

Title 22 California Code of Regulations Section 72528

(a) It is the responsibility of the attending physician to determine what information a reasonable person in the resident's condition and circumstances would consider material to a decision to accept or refuse a proposed treatment or procedure. Information that is commonly appreciated need not be disclosed. The disclosure of the material information and obtaining informed consent shall be the responsibility of the physician.

(b) The information material to a decision concerning the administration of a psychotherapeutic drug or physical restraint, or the prolonged use of a device that may lead to the inability of the resident to regain use of a normal bodily function shall include at least the following:

(1) The reason for the treatment and the nature and seriousness of the resident's illness.

(2) The nature of the procedures to be, used in the proposed treatment including their probable frequency and duration.

(3) The probable degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment.

(4) The nature, degree, duration and probability of the side effects and significant risks, commonly known by the health professions.

(5) The reasonable alternative treatments and risks, and why the health professional is recommending this particular treatment.

(6) That the resident has, the right to accept or refuse the proposed treatment, and if he or she consents, has the right to revoke his or her consent for any reason at anytime.

(c) Before initiating the administration of psycho therapeutic drugs, or physical restraints, or the prolonged use of a device that may lead to the inability to regain use of a normal bodily function, facility staff shall verify that the residents health record contains documentation that that the resident has given informed consent to the proposed treatment or procedure. The facility shall also ensure that all decisions concerning the withdrawal or withholding of life sustaining treatment are documented in the resident's health record.

(d) This section shall not be construed to require obtaining informed consent each time a treatment or procedure is administered unless material circumstances or risks change.

(e) There shall be no violation for initiating treatment without informed consent if there is documentation with the resident's health record that an emergency exists where there is an unanticipated condition in which immediate action is necessary for preservation of life or the prevention of serious bodily harm to the resident or others or to alleviate severe physical pain, and it is impracticable to obtain the required consent; and provided that the action taken is within the customary practice of physicians of good standing in similar circumstances.

(f) Notwithstanding 22 California Code of Regulations Sections 72527(a)(5) and 72528(b)(4), disclosure of the risks of a proposed treatment or procedure may be withheld if there is documentation of one of the following in the resident's health record:

(1) That the resident or resident's representative specifically requested that he or she not be informed of the risk of the recommended treatment or procedure. This request does not waive the requirement for providing the other material information concerning the treatment or procedure.

(2) That the physician relied upon objective facts, as documented in the health record, that would demonstrate to a reasonable person that the disclosure would have so seriously upset the resident that the resident would not have been able to rationally weigh the risks of refusing to undergo the recommended treatment and that, unless inappropriate, a resident's representative gave informed consent as set forth herein.

Regulatory Bill Of Rights Pursuant To

42 C.F.R. Sections 483.10,.12, .13, and .15

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. A facility must protect and promote the rights of each resident, including each of the following rights:

Exercise of rights.

(1) 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.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) 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 are exercised by the person appointed under State law to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by the State court, any legal - surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State Law.

Notice of rights and services.

(1) 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. The facility must also provide the resident with the notice (if any) of the State developed 'under section 1919(e)(6) of the Social Security Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident or his or her legal representative has the right -

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her records for inspection to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.

(3) The resident has 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;

(4) The resident has the right to refuse treatment; to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (8) of this section; and

(5) The facility must -

(i) Inform each resident who is entitled to Medi-Cal benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medi-Cal of

(a) The items and services that are included in facility services under the State plan and for which the resident may not be charged;

(b) Those other items and services that the nursing facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i)(A) and (8) of this section.

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) Protection of Resident Funds.

(1) The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit their personal funds with the facility.

(2) Management of personal funds. Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)c(8) of this section.

(3) Deposit of funds.

(i) Funds in excess of \$50. The facility must deposit any resident's 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 the resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share).

(ii) Funds less than \$50. The facility must maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account or petty cash fund.

(4) 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.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.

(5) Notice of certain balances. The facility must notify each resident that receives Medi-Cal benefits.

(i) When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person, specified in section 1611 (a)(3)(B) of the Social Security Act, and

(ii) 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 Medi-Cal or SSI.

(6) Conveyance upon death. Upon the 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 individual or probate jurisdiction administering the resident's estate.

(7) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the secretary of Health and Human Services, to assure the security of all personal funds of residents deposited with the facility.

(8) Limitation on charges to persona/funds. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medi-Cal 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 in accordance with 42 C. F.R. § 489.32. (This does not affect the prohibition on facility charges for items and services for which Medi-Cal has paid. See 42 C.F.R. § 447.15, which limits participation in the Medi-Cal program to providers who accept, as payment in full, Medi-Cal payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

(i) Services included in Medicare or Medi-Cal payment. During the course of a covered Medicare or Medi-Cal stay, Facilities may not charge a resident for the following categories of items and services:

(a) Nursing services as required at 42 C.F.R § 483.30.

(b) Dietary services as required at 42 C.F.R. § 483.35.

Privacy and confidentiality

The resident has the right to personal privacy and confidentiality of his or her personal and clinical 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) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when -

- (i) The resident is transferred to another health care institution; or
- (ii) Record release is required by law.

Grievances

A resident has the right to -

(1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

Examination of survey results

A resident has the right to -

(1) 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. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

Work. The resident has the right to -

- (1) Refuse to perform services for the facility;
- (2) Perform services for the facility;

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

Mail

The resident has the right to privacy in written communications, including the right to -

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationary, postage and writing implements at the resident's own expense.

Access and Visitation Rights

(1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary of Health and Human Services;

(ii) Any representative of the State of California;

(iii) The resident's individual physician;

(iv) The State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1935);

(vi) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(v) The resident has failed after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medi-Cal) a stay at the facility. For a resident who becomes eligible for Medi-Cal after admission to a facility, the facility may charge a resident only allowable charges under Medi-Cal; or

(vi) Facility ceases to operate.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by -

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must -

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) Timing of the notice.

(i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when -

(A) The safety of individuals in the facility would be endangered under paragraph (9)(2)(iii) of this section;

(B) The health of individuals in the facility would be endangered under (a)(2)(iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(2)(ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(2)(i) of this section; or

(E) A resident has not resided in the facility for 30 days.

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;

(vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medi-Cal 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 Medi-Cal eligible resident.

(4) 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 Medi-Cal.

Resident behavior and facility practices

Restraints. The resident has 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.

Abuse. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents and misappropriation of resident property.

(1) The facility must -

(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment or involuntary seclusion;

(ii) Not employ individuals Who have been -

(a) Found guilty of abusing, neglecting, or mistreating residents by a court of law; or

(b) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and

(iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect or abuse; including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress,

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

Quality of life

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) Dignity. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) Self-determination and participation. The resident has the right to -

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care;

Environment

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;

(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, as specified in 42 C.F.R. § 483.70(d)(2)(iv). Adequate and comfortable lighting levels in all areas;

(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 - 81 F; and

(7) For the maintenance of comfortable sound levels.

The resident may file a complaint with the Licensing and Certification Office concerning non-compliance with the advance directives or for resident abuse, neglect, or misappropriation of resident property in the facility (42 CFR 484.10 (b) (7) (iv)).

PATIENT SELF-DETERMINATION ACT OF 1990

(Public Law 101-508)

101-508 ADVANCE DIRECTIVES

(a 1 x) The requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by a through the provider or organization-

(a) To provide written information to each such individual concerning-

(i) An individual's rights under State law statutory or as recognized by the courts of the State to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directive (as defined in paragraph (3)), and

(ii) The written policies of the provider or organization respecting the implementation of such rights;

(b) To document in the individual's medical record whether or not the individual has executed an advance directive;

(c) Not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(d) To ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and

(e) To provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1XA) shall be provided to an adult individual -

(a) In the case of a hospital, at the time of the individual's admission as a inpatient;

(b) In the case of a skilled nursing facility, at the time of the individual's admission as a resident;

(c) In the case of a home health agency, in advance of the individual coming under the care of the agency:

(d) In the case of hospice program, at the time of initial receipt of hospice care by the individual from the program, and;

(e) In the case of an eligible organization (as defined in section 1876(b)) or and organization provided payments under section 1833 (aX1 XA), at the time of enrollment of the individual with the organization

(3) In this subsection, the term "advance directive" means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.