



Resident Rights

State and Federal Resident Rights
Kentucky Edition

The Health Care Management Group (HCMG) presents the State and Federal Resident Rights for all of it's Facilities

Resident Name: _____

Received by: _____

Relationship: _____

Date: _____

RESIDENT RIGHTS

Nursing facility residents are granted specific rights under both State and Federal law. We have duplicated these laws below for your easy reference.

State Resident Rights

The following are the resident's rights as established under section 216.515 of the Kentucky Revised Code.

216.515 Rights of residents -- Duties of facilities -- Actions.

- (A) Every resident in a long-term-care facility shall have at least the following rights:
- (1) Before admission to a long-term-care facility, the resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member or his guardian, of all services available at the long-term-care facility. Every long-term-care facility shall keep the original document of each written acknowledgment in the resident's personal file.
 - (2) Before admission to a long-term-care facility, the resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member or his guardian, of all resident's responsibilities and rights as defined in this section and KRS 216.520 to 216.530. Every long-term-care facility shall keep the original document of each written acknowledgment in the resident's personal file.
 - (3) The resident and the responsible party or his responsible family member or his guardian shall be fully informed in writing, as evidenced by the resident's written acknowledgment and that of the responsible party or his responsible family member, or his guardian, prior to or at the time of admission and quarterly during the resident's stay at the facility, of all service charges for which the resident or his responsible family member or his guardian is responsible for paying. The resident and the responsible party or his responsible family member or his guardian shall have the right to file complaints concerning charges which they deem unjustified to appropriate local and state consumer protection agencies. Every long-term-care facility shall keep the original document of each written acknowledgment in the resident's personal file.
 - (4) The resident shall be transferred or discharged only for medical reasons, or his own welfare, or that of the other residents, or for nonpayment, except where prohibited by law or administrative regulation. Reasonable notice of such action shall be given to the resident and the responsible party or his responsible family member or his guardian.
 - (5) All residents shall be encouraged and assisted throughout their periods of stay in long-term care facilities to exercise their rights as a resident and a citizen, and to this

end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of their choice, free from restraint, interference, coercion, discrimination, or reprisal.

- (6) All residents shall be free from mental and physical abuse, and free from chemical and physical restraints except in emergencies or except as thoroughly justified in writing by a physician for a specified and limited period of time and documented in the resident's medical record.
- (7) All residents shall have confidential treatment of their medical and personal records. Each resident or his responsible family member or his guardian shall approve or refuse the release of such records to any individuals outside the facility, except as otherwise specified by statute or administrative regulation.
- (8) Each resident may manage the use of his personal funds. If the facility accepts the responsibility for managing the resident's personal funds as evidenced by the facility's written acknowledgment, proper accounting and monitoring of such funds shall be made. This shall include each facility giving quarterly itemized statements to the resident and the responsible party or his responsible family member or his guardian which detail the status of the resident's personal funds and any transactions in which such funds have been received or disbursed. The facility shall return to the resident his valuables, personal possessions, and any unused balance of moneys from his account at the time of his transfer or discharge from the facility. In case of death or for valid reasons when he is transferred or discharged the resident's valuables, personal possessions, and funds that the facility is not liable for shall be promptly returned to the resident's responsible party or family member, or his guardian, or his executor.
- (9) If a resident is married, privacy shall be assured for the spouse's visits and if they are both residents in the facility, they may share the same room unless they are in different levels of care or unless medically contraindicated and documented by a physician in the resident's medical record.
- (10) Residents shall not be required to perform services for the facility that are not included for therapeutic purposes in their plan of care.
- (11) Residents may associate and communicate privately with persons of their choice and send and receive personal mail unopened.
- (12) Residents may retain the use of their personal clothing unless it would infringe upon the rights of others.
- (13) No responsible resident shall be detained against his will. Residents shall be permitted and encouraged to go outdoors and leave the premises as they wish unless a legitimate reason can be shown and documented for refusing such activity.
- (14) Residents shall be permitted to participate in activities of social, religious, and community groups at their discretion.
- (15) Residents shall be assured of at least visual privacy in multibed rooms and in tub, shower, and toilet rooms.
- (16) The resident and the responsible party or his responsible family member or his guardian shall be permitted the choice of a physician.
- (17) If the resident is adjudicated mentally disabled in accordance with state law, the resident's guardian shall act on the resident's behalf in order that his rights be implemented.

- (18) Each resident shall be treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs.
- (19) Every resident and the responsible party or his responsible family member or his guardian has the right to be fully informed of the resident's medical condition unless medically contraindicated and documented by a physician in the resident's medical record.
- (20) Residents have the right to be suitably dressed at all times and given assistance when needed in maintaining body hygiene and good grooming.
- (21) Residents shall have access to a telephone at a convenient location within the facility for making and receiving telephone calls.
- (22) The resident's responsible party or family member or his guardian shall be notified immediately of any accident, sudden illness, disease, unexplained absence, or anything unusual involving the resident.
- (23) Residents have the right to have private meetings with the appropriate long-term care facility inspectors from the Cabinet for Health and Family Services.
- (24) Each resident and the responsible party or his responsible family member or his guardian has the right to have access to all inspection reports on the facility.
- (25) The above-stated rights shall apply in all cases unless medically contraindicated and documented by a physician in writing in the resident's medical record.
- (26) Any resident whose rights as specified in this section are deprived or infringed upon shall have a cause of action against any facility responsible for the violation. The action may be brought by the resident or his guardian. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any deprivation or infringement on the rights of a resident. Any plaintiff who prevails in such action against the facility may be entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds the plaintiff has acted in bad faith, with malicious purpose, or that there was a complete absence of justifiable issue of either law or fact. Prevailing defendants may be entitled to recover reasonable attorney's fees. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a resident and to the cabinet.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 99, sec. 483, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 427, effective July 15, 1998. -- Amended 1988 Ky. Acts ch. 280, sec. 4, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 141, sec. 74, effective July 1, 1982; and ch. 157, sec. 24, effective July 15, 1982. -- Created 1978 Ky. Acts ch. 122, sec. 2, effective June 17, 1978.

Note: 1980 Ky. Acts ch. 396, sec. 78 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.

Complaints

Complaints regarding a nursing facility may be filed with the Cabinet for Health and Family Services by contacting:

Long Term Care Ombudsman Program
Office of the Ombudsman
Cabinet for Health & Family Services
275 East Main Street, 1 E-B
Frankfort, KY 40621
1-800-372-2991

Division of Health Care: Facilities & Services
Office of the Inspector General
Cabinet for Health & Family Services
275 East Main Street, 5 E-A
Frankfort, KY 40621
1-502-564-2800

Your Local Ombudsman Program
Contact: Pam Pangburn, Millie Little or Sister Joell Overman
1-800-255-7265
(859) 491-0522 (Northern Kentucky)

You Do Not Have To Give Your Name

Federal Resident Rights

The following are the resident rights established under 42 CFR 483.10.

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:

- (a) *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.
- (b) *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 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 Medicaid benefits, in writing, at the time of admission to the nursing facility or, 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
 - (ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i) (A) and (B) of this section.
- (6) 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 or by the facility's per diem rate.
- (7) The facility must furnish a written description of legal rights which includes—
 - (i) A description of the manner of protecting personal funds, under paragraph (c) of this section;
 - (ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;
 - (iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and
 - (iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.
- (8) The facility must comply with the requirements specified in subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. 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 individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. 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. If an adult individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.
- (9) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

- (10) The facility must prominently 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.
 - (11) *Notification of changes.*
 - (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member 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 (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);
 - (C) A need to alter treatment significantly (i.e., a need to discontinue 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 as specified in §483.12(a).
 - (ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is—
 - (A) A change in room or roommate assignment as specified in §483.15(e)(2); or
 - (B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) 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.
 - (12) *Admission to a composite distinct part.* A facility that is a composite distinct part (as defined in §483.5(c) of this subpart) 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 under §483.12(a)(8).
- (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)–(8) of this section.
 - (3) *Deposit of funds.*
 - (i) *Funds in excess of \$50.* The facility must deposit any 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.)
 - (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 Medicaid 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 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 Medicaid 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, to assure the security of all personal funds of residents deposited with the facility.
- (8) *Limitation on charges to personal 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 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 in accordance with §489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See §447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)
 - (i) *Services included in Medicare or Medicaid payment.* During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:
 - (A) Nursing services as required at §483.30 of this subpart.
 - (B) Dietary services as required at §483.35 of this subpart.
 - (C) An activities program as required at §483.15(f) of this subpart.
 - (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, and basic personal laundry.

(F) Medically-related social services as required at §483.15(g) of this subpart.

(ii) *Items and services that may be charged to residents' funds.* Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(A) Telephone.

(B) Television/radio for personal use.

(C) Personal comfort items, including smoking materials, notions and novelties, and confections.

(D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.

(E) Personal clothing.

(F) Personal reading matter.

(G) Gifts purchased on behalf of a resident.

(H) Flowers and plants.

(I) Social events and entertainment offered outside the scope of the activities program, provided under §483.15(f) of this subpart.

(J) Noncovered special care services such as privately hired nurses or aides.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by §483.35 of this subpart.

(iii) *Requests for items and services.*

(A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.

(B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.

(C) The facility must inform the resident (or his or her representative) 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.

(d) *Free choice.* The resident has the right to—

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *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.
- (f) *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.
- (g) *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.
- (h) *Work.* The resident has the right to—
 - (1) Refuse to perform services for the facility;
 - (2) Perform services for the facility, if he or she chooses, when—
 - (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.
- (i) *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 stationery, postage, and writing implements at the resident's own expense.
- (j) *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;
 - (ii) Any representative of the State;
 - (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 1965);
 - (v) 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);
 - (vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);
 - (vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

- (viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.
- (2) The facility must provide reasonable access to any 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.
- (3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.
- (k) *Telephone.* The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.
- (l) *Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.
- (m) *Married couples.* The resident has 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.
- (n) *Self-Administration of Drugs.* An individual resident may self-administer drugs if the interdisciplinary team, as defined by §483.20(d)(2)(ii), has determined that this practice is safe.
- (o) *Refusal of certain transfers.*
 - (1) An individual has the right to refuse a transfer to another room within the institution, if the purpose of the transfer is to relocate—
 - (i) 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
 - (ii) 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.
 - (2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.