

SECTION IV

INTERPRETATIONS OF THE ADULT CARE HOME

RESIDENTS' BILL OF RIGHTS

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Below are some interpretations of the Adult Care Home Residents' Bill of Rights. These are provided to help clarify the intent of each right. It is important to keep in mind though, that while these interpretations may provide guidance as to the protection and opportunities afforded Adult Care Home residents, they are not in every case a clear cut statement of what the rights permit or prohibit in all situations. For some rights the interpretations are rather specific declarations but for other rights the interpretations only offer guidance of how the right may be applied in a particular situation.

RIGHT 1 - To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.

Comment:

Staff courtesies will contribute to the residents' self respect and should be no less than what we would expect from other people with whom we deal in everyday life. Residents should have maximum flexibility to exercise choices about what they will do and when they will do it and be afforded privacy when they wish it.

Interpretation:

- A. Staff of the facility should speak courteously to the residents at all times. Speaking and interacting with residents gives the staff many opportunities to reaffirm the individual characteristics and dignity of the residents. Staff need to be aware of and sensitive to problems, feelings and needs of the residents. As a general rule, they should address residents by the name the resident prefers, not "Honey" or "Darling." They should talk to a resident rather than about him in his presence; they should knock before entering a bathroom or bedroom.
- B. Staff should encourage residents to exercise choice in individual preferences such as clothing; social, education or religious activities; friendships; and other areas where it is possible to encourage individuality.
- C. Staff should ensure the privacy of a resident's body at all times. A closed door or a drawn curtain will shield residents from passersby. In cases where a resident's safety must be considered, assistance by other staff may be required but staff can still ensure privacy of the resident.

RIGHT 2 - To receive care and services which are adequate, appropriate and in compliance with relevant federal and state laws and rules and regulations.

Comment:

If the facility is in compliance with the minimum standards, residents should be receiving care and services, which are at least minimally adequate and appropriate. However, not all violations of standards relate directly to whether an individual is receiving adequate or appropriate care and services.

While the facility may not be in compliance with all requirements at a given point in time, some violations do not impact directly on residents and, therefore, may not affect their personal well being. For example, in a facility with a disoriented resident if the sounding device at an exit door is inoperable, a violation of minimum standards has occurred. However, unless the disoriented resident wanders out that door unsupervised, it is not considered a violation of that individual's right to receive adequate care.

Interpretation:

- A. Each resident must receive all care and services described in the minimum standards for that type of facility. This includes but is not limited to: supervision and assistance in caring for basic personal needs, appropriate response in case of emergencies, medication management, adequate furnishings, an activities program, assistance in arranging for health and mental health services, etc.
- B. A violation of this right occurs when noncompliance with a standard or other applicable law presents a direct relationship or impact on the personal well being of a specific individual or individuals. If this relationship or impact on a specific individual cannot be shown, a violation of this right has not occurred although the facility may have violated a minimum standard.
- C. It is important that staff be appropriately trained and that the facility and staff are able to provide care for the types and numbers of residents placed in the facility. An inadequate staffing arrangement or inappropriately placed residents may result in inadequate care.

RIGHT 3 - To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.

Comment:

The minimum standards in all of these licensed facilities support this right in that it is required for services, accommodations, rates and refund policies to be given to a resident upon admission and signed by the resident or responsible party and by the administrator or supervisor in charge with a copy furnished to the resident and a copy filed in the resident's record.

Interpretation:

- A. The statement should clearly identify services and supplies, which are to be provided, and the rates charged for these services, regardless of the individual's means of payment.
- B. When rates change, the resident and/or the responsible party must be notified in writing by the administrator.
- C. When standards are revised and there are added services these must be included in the written statement and given to the resident for his signature. A copy must be placed in the resident's file.

RIGHT 4 - To be free of mental and physical abuse, neglect, and exploitation.

Comment:

General Statute 131D-2, the Adult Care Home licensure law, defines abuse as "the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of a Adult Care home of services which are necessary to maintain mental and physical health." The General Statute defines exploitation as "the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage." It defines neglect as "the failure to provide the services necessary to maintain a resident's physical or mental health." If there is the possibility that a disabled resident has been subjected to abuse, neglect or exploitation and is in need of protective services, this must be immediately reported to the county department of social services which will determine the appropriateness of investigation under the North Carolina adult protective services law (General Statute 108A-102).

Interpretation:

- A. All staff, including aides, orderlies, housekeeping and kitchen help, need to be aware of the importance of being sensitive to residents' feelings since what constitutes mental anguish may vary between individuals.
- B. Administrators are responsible for exercising all reasonable care in selecting staff who will not be abusive, neglectful, or exploitative and for taking appropriate action in the case of any staff member who is involved in mistreatment of a resident as described in the comments.
- C. Normally, if services required in the standards are offered and delivered by the administrator and staff, there will be no basis for concern about neglect.
- D. Administrators need to keep thorough records of the residents' money when they are assisting the residents in the management of that money. They need to be conscientious about ensuring that the resident endorses his own checks. They should keep the resident clearly informed about how much money he has in his personal needs fund if the resident has requested that they hold it for safekeeping.

RIGHT 5 - Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period

of time by a physician according to clear and indicated medical need.

Comment:

Physical restraints are items or actions, which prevent a resident from doing something he might voluntarily do. These include devices such as restraining straps, sheets, etc., or denial of access to a wheelchair, all of which render the resident immobile. Side rails and restraining sheets (when used in a chair) for individuals who need them for physical support are not considered restraints in the licensure standards when used for the protection of the resident and not to restrict movement. Chemical restraint results from inappropriate prescribing, administering or monitoring of drugs.

Interpretation:

- A. Chemical and physical restraints may be used only by a physician's order. The order must be written to specify when and under what circumstances a restraint may be used.
- B. Neither chemical nor physical restraints can be used to control a resident's mobility for the convenience of the staff, for punishment, unlimited periods of time, or as a substitute for supervision.
- C. Restraints may be used, when necessary, to protect a resident from injuring himself or others during an emergency, but must not be used as a routine method of dealing with a chronic behavior problem. If an emergency restraint is used more than once, the administrator should seek help in solving the problem another way.
- D. PRN (pro re nata, Latin-translated means "as the occasion arises") blanket orders by a physician for physical restraints are not permitted. If a physician writes a PRN order, the order must specify the type of restraint, for what reason the restraint is to be used, and the time intervals at which the restraints are to be loosened or removed.
- E. Administrators need to keep accurate medication charts and to be sure that the orders written by the physician match exactly the medications, which are being administered.

RIGHT 6 - To have his or her personal and medical records kept confidential and not disclosed without the written consent of the individual or guardian, which consent shall specify to whom the disclosure may be made, except as required by applicable state or federal statute or regulation or by third party contract. In the case of an emergency, disclosure can be made to agencies, institutions or individuals that are providing the emergency medical services.

(It is not the intent of this section to prohibit access to medical records by the treating physician except when the individual objects in writing. Records may also be disclosed without the written consent of the individual to agencies, institutions or individuals that are

providing emergency medical services to the individual. Disclosure of information shall be limited to that which is necessary to meet the emergency).

Comment:

This right requires the home to get the resident's or his guardian's written consent before disclosing information contained in the records. The consent would need to specify to whom the disclosure may be made. There are a few exceptions to the confidentiality of the resident's records where it will not be necessary to get the resident's or his guardian's written consent to disclose information contained in the records.

Interpretation:

- A. Each staff member authorized by the administrator to have access to confidential resident information must be informed of the confidential nature of the information and must protect and preserve such information from unauthorized use and disclosure.
- B. Information contained in a resident's personal and medical records can only be disclosed with the resident's or his guardian's written consent, except for the following:
 - 1. Such records are available for review by the authorized monitoring and licensing agents in carrying out their appropriate duties. They in turn must protect any confidential information obtained in their review.
 - 2. Staff of the county department of social services has access to these records in making an evaluation of a resident's need for protective services.
 - 3. Medical records are available to a resident's physician and other health professionals operating under his orders, unless the resident objects to this in writing.
 - 4. Medical records may be disclosed without the resident's written consent to persons involved in providing emergency medical services to the resident. The information is to be limited to that necessary to meet the emergency.
 - 5. The medical records may be disclosed to a private peer review committee approved by the North Carolina Department of Health and Human Services. This committee would be required to keep the information in the records confidential.

RIGHT 7 - To receive a reasonable response to his or her requests from the facility, administrator and staff.

Comment:

Reasonable can be defined as sensible or judicious. A resident should not expect that every request he makes will be granted because some requests may be impractical or even detrimental to his health or to others in the home.

Interpretation:

- A. Requests for services required under the standards must be granted.
- B. Requests for services not required under the standards deserve consideration, particularly requests which would improve the quality of life of a resident.
- C. When requests are denied the reasons should be carefully explained.

RIGHT 8 - To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own or their initiative at any reasonable hour.

Comment:

Reasonable can be defined as sensible or judicious. Reasonable hours should be interpreted to mean waking hours. Normally, facility staff is unusually busy during the early part of the morning hours. After 10:00 a.m. and before 9:00 p.m. should, in most cases, be considered reasonable. A facility would not be obligated to allow visitors who were disruptive to the resident or detrimental to his well being as determined with the resident or his responsible person.

Interpretation:

- A. A facility should provide a place where a resident may meet privately with family or with friends. In semi-private rooms, provisions should be made so that a resident may associate or communicate privately with anyone he desires.
- B. A facility has the right to restrict visiting hours as long as there are daily visiting hours which comply with the minimum standards under which the home is licensed.
- C. A facility should allow a visitor in unusual hours if this is the only possible hour a family member could visit.
- D. When a decision is made by the facility that a particular visitor will not be admitted this should be discussed with the resident, family or social services worker, if appropriate, and documented in the resident's file.

RIGHT 9 - To have access at any reasonable hour to a telephone where he or she may speak privately.

Comment:

It is important that residents have the link to relatives, friends and the outside world that the telephone provides.

Interpretation:

- A. The same definition of "reasonable" and "reasonable hours" should apply as in No. 8 above.
- B. In most cases a telephone in the hall, lobby or activity room should afford enough privacy for a resident.
- C. In some cases where a resident requests privacy and considers this to be absolutely necessary, a resident should be allowed to use the telephone in a more private area such as the home's office. If the call is long distance, the resident can be expected to pay for the call.

RIGHT 10 -To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery, and postage.

Comment:

This is a legal right, which all United States citizens should expect.

Interpretation:

- A. Mail to the resident must be delivered on the same day it is received.
- B. Mail cannot be opened without the resident's consent. It is illegal to open another person's mail without his or her consent.
- C. If a resident requests assistance in opening and reading mail, this request is to be honored.
- D. If a resident requests help in answering mail, this request is to be honored.
- E. A resident should be encouraged to keep contact with family and friends by mail.
- F. A resident is expected to purchase his own stationery, writing instruments and stamps, but administrators should respond to requests for supplies by either transporting the resident to a store or by getting it for the resident at cost if he is not able to go out himself.

RIGHT 11 -To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.

Comment:

Residents should be encouraged to be involved in community and civic affairs to the maximum extent possible. Such involvement enhances a person's sense of worth and well being. For most people, feelings of independence/personal autonomy depend upon being able to control to some extent their immediate environment and daily activities. In this regard, residents should be able to influence the scope and quality of services and the routines within the facility. Moreover, input from residents regarding food preferences, activities, and socializing can be very helpful to the administrator and the residents.

Interpretation:

- A. Grievance policies should be formalized in writing and explained to the resident at admission so that a resident may feel free to criticize.
- B. Criticisms and complaints should be received by the home objectively and heeded where possible. A suggestion box could be helpful in encouraging residents to exercise their rights in the facility.
- C. Administrators should make an effort to transport residents to register and vote.

RIGHT 12 -To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.

Comment:

The items most likely to need securing are private papers such as legal documents, stock certificates, letters important to the resident, and jewelry items such as rings and watches.

Interpretation:

- A. Lockable space does not mean general storage. There are no specifications as to size in the law. Lockable spaces that can be considered are a lockable drawer, a locker, an individual lockable closet or box, etc.
- B. The administrator must furnish a space for each resident to store his valuables. This space, whether it be a drawer, a box or some other container must have a lock and duplicate keys so that the resident can unlock it when he wants to and the administrator or supervisor-in-charge can unlock it if the resident loses his key.
- C. The resident is to receive one key free of charge and additional copies on request at cost.
- D. While the resident may elect not to use the lockable space, it must still be available in the home since the resident may change his/her mind.

RIGHT 13 -To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.

Comment:

The management of his personal funds promotes independence and responsible decision making in a number of small but important ways for the resident.

Interpretation:

- A. To the extent they are possibly able, residents should be encouraged to handle their own personal needs funds.
- B. The resident is due his personal needs funds as soon as the check is received and can be cashed.
- C. The checks, which come to the facility, are usually written to the resident. The resident pays the facility for his room, board, and care. The remainder he keeps for his personal needs such as Medicaid copayment-payments, soft drinks, tobacco products, etc.
- D. The management of personal needs funds can be delegated to the facility only through a written statement in the resident's record, signed by the resident or his responsible person.
- E. If the resident requests that the administrator handle his personal needs money, the administrator must keep accurate records.
- F. If the resident requests to look at his account the administrator must let him examine it.
- G. The resident can terminate this agreement at any time (as long as he has paid what he owes). Any balance belonging to the resident must be delivered to him promptly.

RIGHT 14 -To be notified when the facility is issued a provisional license or notice of revocation of license by the North Carolina Department of Health and Human Services and the basis on which the provisional license or notice of revocation of license was issued. The resident's responsible family member or guardian must also be notified.

Comment:

Residents need to know when and in what area the facility in which they are residing is deficient in meeting the minimum standards and regulations for operation.

Interpretation:

- A. When the facility receives a provisional license or notice of revocation of license, a letter accompanies the license or notice stating the reasons the home's license has been downgraded or may be revoked. This letter must be posted in a conspicuous place and residents informed about the letter, or the administrator can send each resident a letter containing this information.
- B. If a resident has a guardian, or a responsible family member, the facility must notify the guardian, or family, in writing, that the home has a provisional license or has received a notice of revocation of license and the reasons it was issued.

RIGHT 15 -To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.

Comment:

As a general rule, residents have the same freedom of choice in the areas listed above as do other people in the community. Their basic freedoms are not legally limited or restricted in any way simply by the fact that they are residents of Adult Care facilities.

Interpretation:

- A. The administrator must make it clear in his written policies and procedures that he encourages residents in their pursuits of entering into community life.
- B. The administrator must furnish transportation to community resources according to the standards.
- C. The resident has the right to choose his own physician in the community.
- D. Residents should be encouraged to advocate for themselves, i.e., to reach out for or refuse involvement or activities based on what they believe is appropriate or desirable for themselves, as individuals.

RIGHT 16 -To receive upon admission to the facility a copy of this section.

Comment:

This is self-explanatory. It refers to the Declaration of Rights.

Interpretation:

The facility must have a statement typed or clearly written that the Declaration of Rights was received by the resident. The resident signs the receipt and the administrator files this in the resident's record.

RIGHT 17 --To not be transferred or discharged from the facility

except for medical reasons, the resident's own or others residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Secretary, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Secretary shall adopt rules pertaining to the transfer and discharge of residents that offer at least the same protection to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes. (c. 923, s.1; 1983, c. 824, s. 13; 1983 (Reg. Sess., 1984), 1076; 1997-443, s. 11A.118(a); 1999-334, s. 1.6)