

## Resident Rights

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

Residents of nursing homes have rights under both federal and state law. Nursing homes are required to inform residents of these rights and protect and promote their rights. If a resident is incapable of exercising his or her rights, the person designated by law, such as conservator or attorney-in-fact, or in most cases, the next of kin, or representative payee, may exercise these rights.

For a more detailed listing of residents' rights, see CANHR's Fact Sheet, [Outline of Nursing Home Residents' Rights](#).

## Grievances

The resident has the right to:

- Exercise rights, 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. (42 CFR §483.10(j))
- Prompt efforts by the facility to resolve grievances the resident may have, including those having to do with other residents. (42 CFR §483.10(j)(1)&(2))

## Admission Agreements

The resident has rights about the content of admission agreement contracts, which are signed at the time the resident enters the nursing home:

- The nursing home must use the Standard Admission Agreement developed by the California Department of Public Health. (Cal. Health & Safety Code §1599.61)
- The contract may not require that the resident pay with private funds (i.e. with funds that are not Medicare or Medi-Cal) for a specified period of time. (Cal. Health & Safety Code §1599.69(a))
- The contract may not require, at the time of admission, the resident to give notice that he or she intends to convert to Medi-Cal status. (Health & Safety Code §1599.69(b))
- The contract may not require the resident to promise not to apply for Medicare or Medi-Cal benefits. (42 CFR §483.15(a)(2))
- The contract may not require a third-party guarantee of payment as a condition of admission or expedited admission. (42 CFR §483.15(a)(3); Cal. Welfare & Institutions Code §14110.8(b))

In addition, a resident has the right to have his or her security deposit returned:

- When the resident converts to Medi-Cal. (Cal. Health & Safety Code §1599.70(b); Cal. Welfare & Institutions Code 14110.8(d))

## Medical Condition and Treatment

The resident has the right 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. (42 CFR §483.10(c))
- Be fully informed in advance about care and treatment and of any changes in care or treatment that may affect the resident. (42 CFR §483.10(c)(2),(4))

- Participate in planning care and treatment or changes in care or treatment. (42 C.F.R. §483.10(d)(3) 42 CFR §483.10(c))
- Self-administer medications if the interdisciplinary team determines it is appropriate. (42 C.F.R. §483.10(n) 42 CFR §483.10(c)(7))
- Choose a personal attending physician. (42 C.F.R. §483.10(d))
- To consent to or refuse any treatment or procedure or participation in experimental research. (42 CFR §483.10(c)(6))
- To receive all information that is material to his or her decision concerning whether to accept or refuse any proposed treatment or procedure. (42 CFR §483.10(c)(5)(6))

## **Protection of Resident Funds**

The resident has the right to:

- Manage his or her financial affairs. The facility may not require residents to deposit their personal funds with the facility although a resident can if he or she so desires. (42 CFR §483.10(f)(10))
- Have funds entrusted to the facility held separately from the funds of the facility and from those of other residents, and have an accurate accounting of those funds. Funds over \$50 for residents on Medi-Cal and over \$100 for other residents must be held in an interest-bearing account. (42 CFR §483.10(f)(10))
- Be informed when the amount in the resident's account, if managed by the facility, reaches \$200 less than the \$2000 Medi-Cal resource limit and, if increased, may cause the resident to be disqualified from Medi-Cal. (42 CFR §483.10(f)(10)(iv))

## **Transfer and Discharge**

The resident has the right to be transferred or discharged only if:

- He or she has recovered to the point of not needing nursing home care. (42 CFR §483.15(c)(1)(i)(B))
- It is necessary for the resident's welfare and her/his needs cannot be met in the facility. (42 CFR §483.15(c)(1)(i)(A))
- The health or safety of others is endangered. (42 CFR §483.15(c)(1)(i)(C)&(D))
- He or she has failed to pay for care. (42 CFR §483.15(c)(1)(i)(E))
- The facility ceases to operate. (42 CFR §483.15(c)(1)(i)(F))

Other rights regarding transfer or discharge from a nursing home:

- A nursing home must give both the resident and legal representative advance notice of the transfer or discharge as soon as practicable or reasonable, or in some cases, at least 30 days in advance. (42 CFR §483.15(c)(3)&(4), Title 22, Cal. Code of Regulations §72527(a)(6))
- A nursing home that participates in the Medi-Cal program may not transfer or seek to evict a resident when he or she changes from private pay or Medicare to Medi-Cal, or while the Medi-Cal application is pending. (42 CFR §483.15(c)(1)(i)(E); Cal. Welfare & Institutions Code §14124.7(a))
- The nursing home must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. (42 CFR §483.15(c)(7); Cal. Health & Safety Code §1599.78)
- The nursing home must produce a discharge summary that includes a post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living arrangement. (42 CFR §483.21(c)(2))
- The resident has a right to a 7-day bedhold and immediate readmission when transferred to a general acute care hospital, if he or she continues to pay for the nursing home bed. (42 CFR §483.15(d)&(e); Cal. Health & Safety Code § 1599.79; Title 22, Cal. Code of Regulations, §72520(a))

- After a hospitalization, the resident has the right to be readmitted to the nursing home's first available bed, if the nursing home fails to give written notice of the resident's right to a 7-day bedhold. (Cal. Health & Safety Code §1599.79; Title 22, Cal. Code of Regulations, §72520(c))
- After a hospitalization, a resident who is a Medi-Cal recipient has the right to the nursing home's first available bed even if he or she is absent from the nursing home for more than 7 days. (42 CFR §483.15(e)(1)(i))

## **Chemical & Physical Restraints & Abuse**

The resident has the right to:

- Be free from verbal, sexual, physical, and mental abuse, corporal punishment, involuntary seclusion, neglect, misappropriation of resident property and exploitation. (42 CFR §483.12)
- Be free from any physical or chemical restraints—either psychotherapeutic or antipsychotic drugs—imposed for purposes of discipline or staff convenience which are not required to treat the resident's medical symptoms (42 CFR §483.12(a)(2))
- Be given the necessary information to be able to refuse or accept the use of psychotherapeutic drugs, physical restraints, or the prolonged use of a device that may lead to the inability to regain use of normal bodily functions, which will allow the resident to give informed consent about the use of these methods. (Title 22, Cal. Code of Regulations §72528)
- Based on a comprehensive assessment of a resident, the facility must ensure that:
- Residents who have not used psychotropic drugs are not given these drugs unless these medications are necessary to treat a specific condition. (42 CFR §483.45(e)(1))
- Residents who use psychotropic drugs receive gradual dose reductions and behavioral interventions in an effort to discontinue these drugs, unless clinically contraindicated. (42 C.F.R. §483.25(l)(2)(ii) 42 CFR §483.45(e)(2))
- The facility must ensure that each resident's drug regimen is free from unnecessary drugs. (42 CFR §483.45(d))

## **Resident Records**

The resident has the right to:

- Personal privacy and confidentiality of his or her personal and clinical records. (42 CFR §483.10(e)(10))
- Review all records pertaining to the resident upon oral or written request within 24 hours, and to purchase copies of these records (including electronic copies when maintained in this format) with two days advance notice. (42 CFR §483.10(g)(2))
- Approve or refuse release of records to any individual or agency outside the facility except when transferred or required by law. (42 CFR §483.10(h)(3))

## **Dignity and Privacy**

The resident has the right to be treated with consideration, respect and full recognition of dignity and individuality (42 C.F.R. §483.15(a) 42 CFR §483.10(a)(1)). This includes the right to:

- privacy during treatment, personal care, communications, accommodations, visits and meetings of resident and family groups; (42 CFR §483.10(h)(1))
- receive and make phone calls in private; (42 CFR §483.10(g)(6))
- send and receive mail unopened; (42 CFR §483.10(g)(8))
- associate privately with persons of resident's choice, inside or outside the facility. (42 CFR §483.10(g)(2) 22 CCR §72527(a)(14))

## **Free Choice and Participation**

The resident has the right to:

- Refuse to perform services for the facility. (42 CFR §483.10(f)(9))
- Choose activities and schedules consistent with his or her interests and care plan and to receive services with reasonable accommodation of individual needs and preferences. (42 CFR §483.10(e)(3) and (f)(1))
- Make choices about aspects of life in the facility that are significant to the resident. 42 CFR §483.10(f)(2)
- Participate in resident groups and in activities of social, religious and community groups. (42 CFR §483.10(f)(3)&(5))
- Communicate with persons of one's choice inside or outside of the facility. (22 CCR §72527(a)(14))
- Retain and use personal clothing and possessions as space permits if it doesn't infringe upon the rights or health and safety of other residents. (42 CFR §483.10(e)(2))

## **Access and Visitation**

The resident has the right to receive visitors of her or his choosing and the facility must provide—subject to the resident's right to deny or withdraw consent at any time—immediate access to any resident by:

- Immediate family or other relatives of the resident. (42 CFR §483.10(f)(4)(ii))
- Others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions. (42 CFR §483.10(f)(4)(iii))
- 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. (42 CFR §483.10(f)(4)(iv))
- If a resident is married, he or she and their spouse must be assured privacy and to be able to share a room if both are residents in the facility and both agree to do so. (22 CCR §72527(a)(17), 42 CFR §483.10(e)(4))

## **Resident & Family Councils**

### **Resident Councils**

A resident has the right to organize and participate in resident groups in the facility. (42 CFR §483.10(f)(5))

The facility must provide a resident group with private space. (42 CFR §483.10(f)(5) (i))

Staff or visitors may attend meetings at the group's invitation. (42 CFR §483.10(f)(5)(ii))

The facility must provide a designated staff person who is approved by the group and who is responsible for providing assistance and responding to written requests from the resident council. (42 CFR §483.10(f)(5)(iii))

The nursing home must listen to the views, and act promptly upon the grievances and recommendations of a resident council, concerning policies affecting resident care and life in the facility. (42 CFR §483.10(f)(5)(iv))

### **Family Councils**

A resident's family has the right to meet in the facility with families of other residents. A nursing home may not prohibit the formation of a family council. (42 CFR §483.10(f)(7), Cal. Health & Safety Code §1418.4)

A family council may be made up of family members, friends, or representatives of residents. (Cal. Health & Safety Code §1418.4(c))

The family council must be allowed to meet in a common meeting room of the nursing home at least once a month, and to meet in private without nursing home staff present. (42 CFR §483.10(f)(5)(i); Cal. Health & Safety Code §1418.4(a), (c))

Staff or visitors may attend family council meetings, at the group's invitation. (42 CFR §483.10(f)(5)(ii); Cal. Health & Safety Code §1418.4(e))

The nursing home is required to consider the views, and act upon the grievances and recommendations of a family council, concerning proposed policy and operational decisions affecting resident care and life in the facility. (42 CFR §483.10(f)(5)(iv); Cal. Health & Safety Code §1418.4(g))

The nursing home is required to respond within 10 working days to written requests or concerns of the family council. (Cal. Health & Safety Code §1418.4(h))

These residents' rights are found under both Federal and State law. The Federal rights are found in the Code of Federal Regulations "CFR"), Title 42, which can be accessed online. The California rights are found in the Health & Safety and Welfare & Institutions Codes, which can be accessed online at <http://leginfo.legislature.ca.gov/>, and in the California Code of Regulations, Title 22.