

chapter 9

THE RIGHTS OF NURSING HOME RESIDENTS

Residents of nursing homes enjoy the same constitutional and civil rights they had when they were living in their own homes. In fact, residents are protected by state and federal laws which recognize their vulnerability. Residents and family members should become familiar with these laws to make certain their rights are being protected.

All nursing homes that accept Medicare or Medicaid are required to comply with the Nursing Home Reform Act.³ This law was enacted to ensure that nursing home residents “attain or maintain the highest practicable physical, mental and psychosocial well-being.” In addition to this federal act, Virginia has its own set of regulations governing the rights of nursing home residents and residents of assisted living facilities.⁴ Taken together, the federal Nursing Home Reform Act and Virginia's statutes provide a sweeping “Bill of Rights” for all residents of nursing homes and assisted living facilities, whether receiving federal funds or private-pay. The following is a summary of these important protections.

³ The Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987.

⁴ Virginia Code § 32.1-138 and § 63.2-1808. These regulations also apply to continuing care retirement communities that offer nursing care or assisting living for residents within their facility.

The Virginia Nursing Home Survival Guide

THE RIGHT TO MAKE DECISIONS

Nursing home residents may exercise their rights as citizens without interference from the nursing home. Nursing home residents have the right to make financial and medical decisions -- including the right to check out of the nursing home — unless the resident has chosen, in advance, who will assert his or her rights if the resident is no longer able to do so (via a financial and/or health care power of attorney) or if a court has appointed someone to make those decisions (guardianship/conservatorship).

THE RIGHT TO BE FULLY INFORMED

Upon admission to a facility, a residents is entitled to information about the rights of residents of the facility. Each resident must be informed orally and in writing of those rights. Residents have the right to be informed of the services offered and charges for those services (including those not covered by the facility's daily rate); residents are entitled to know the facility's regulations, the results of state inspections, the procedures for transfer, and the names and addresses of every owner of the facility.

Residents have the right to be informed of their medical condition and treatment plan. Residents have the right to receive notice of changes concerning their treatment, including but not limited to altering medications, a change in physical or mental status, room or roommate changes, and a transfer or discharge from the nursing home. In addition, if a nursing home changes its charges or services, it is required to notify the residents, in writing, at least 30 days before the change goes into effect.

The Virginia Nursing Home Survival Guide

THE RIGHT TO PARTICIPATE IN CARE PLANNING

Residents have the right to full participation in their care planning — including the right to refuse services and the right to refuse medical treatment. Residents have the right to participate in their own care plan meetings (and invite anyone they wish to attend those meetings, as well). Residents must be able to choose their own doctor and choose a pharmacy (so long as the pharmacy's unit dose system is the same as the nursing home's). Unless the attending physician or interdisciplinary team has determined it unsafe, each resident has the right to self-administer his or her medications.

Residents have the right to inspect their charts and may, upon written request, obtain copies of all of their own records. Residents have the right to information regarding how to examine those records, as well.

THE RIGHT TO BE TREATED WITH DIGNITY AND RESPECT

One of the most fundamental rights, and also one of the most overlooked, is the legal right residents have to be treated with dignity and respect. So long as it is not detrimental to their care plan, residents have the right to make their own schedules and choose which activities they attend. In making their own schedules, residents have the right to decide what time they wake up in the morning, what time they eat their meals and what time they go to bed at night.

Residents have the right to be addressed in the manner they choose — whether by a formal title — such as Mr. Smith, Mrs. Jones, Dr. Baker or General Johnson — or by a first name or a nickname if that is their preference.

The Virginia Nursing Home Survival Guide

THE RIGHT TO CONFIDENTIALITY

All information regarding personal, financial, medical and social affairs is privileged and is to be kept confidential. The nursing home may not show the resident's chart to other people or agencies without permission, nor may they discuss treatment options with others unless they have permission.

THE RIGHT TO PRIVACY

Residents have the right to privacy in all aspects of life. They have the right to meet privately with any visitors (family, friends, physician, ombudsman, legal representative or anyone else), to send and receive private, unopened mail, and to make private telephone calls. Residents have the right to have all medical and personal care provided with privacy, using visual barriers to prevent others from viewing care and treatment. Residents have the right to perform all bodily functions (bathing, toileting, etc.) in private. If assistance is required, only those staff members needed to help should be present. Subject to possible restrictions based on care needs or payor source, residents have the right to take trips out of the facility for lunch or dinner, for a family holiday, or for a weekend visit.

THE RIGHT TO VOICE GRIEVANCES

Every nursing home must have a system to address concerns relating to residents' treatment or care. This includes grievances residents have concerning the behavior of other residents. Residents have the right to prompt efforts for resolution by the nursing home. The staff and administration are prohibited by law from retaliation for complaints. The nursing home must also post information relating to pertinent government and advocacy organizations (such as the number and address for the Long Term Care Ombudsman). Residents, of course, maintain the right to report crimes to the local police and/or district attorney.

The Virginia Nursing Home Survival Guide

THE RIGHT TO MANAGE FINANCES

Residents have the right to manage their own financial affairs. Residents cannot be required to deposit personal funds with the nursing home. If the residents choose to deposit funds with the nursing home, the facility must manage the residents' funds properly. Residents have the right to written quarterly accountings of their funds.

THE RIGHT TO KEEP PERSONAL PROPERTY AND HAVE IT SECURED

All nursing homes are required to have a written policy concerning protection of residents' personal property. If a resident's property is lost, and the nursing home is responsible for the loss, the resident may have a claim against the nursing home to replace the property.

THE RIGHT TO BE FREE FROM ABUSE AND NEGLECT

Residents have the right to be free from physical, sexual, verbal, and mental abuse. Residents have the right to be free from corporal punishment and involuntary seclusion. Residents have the right to be free from neglect. Any failure by the nursing home to provide the resident with necessary services, including those identified in the resident's care plan, constitutes neglect and is a violation of residents' rights. Residents have the right to express complaints and concerns without fear of retaliation.

THE RIGHT TO BE FREE FROM PHYSICAL AND CHEMICAL RESTRAINTS

Residents have the right to be free from unnecessary physical restraints (vest restraints, hand mitts, four point restraints and any and all other physical restraints) and unnecessary chemical restraints (anti-psychotic drugs, sedatives, and any and all other chemical restraints). Restraints are to be used only as treatment for

The Virginia Nursing Home Survival Guide

medical symptoms and must be prescribed by a physician. Chemical or physical restraints are not to be used for disciplinary measures, nor may they be used for staff convenience.

THE RIGHT AGAINST UNLAWFUL DISCHARGE OR TRANSFER AND THE RIGHT TO RE-ADMISSION

Due to the seriousness of discharging a resident (the transfer trauma suffered by the resident, the stress undergone by the family members locating a new facility, etc.), the regulations concerning unlawful discharge are very specific and must be followed precisely. A nursing facility may only discharge a resident for the following reasons:

- It can no longer meet the resident's medical needs as documented in writing by the resident's own physician;
- Non-payment after reasonable notice; or
- The resident is a danger to self or others, as documented by the physician (if relating to a health issue) or as documented by the nursing home (if relating to patients' safety).

Unless it is an emergency situation, residents must be given written notice 30 days prior to the date of discharge. The "discharge notice" must state the reason for the discharge and the location to which the resident is to be transferred or discharged. The notice must also provide information regarding the right to appeal the discharge.

If a resident is transferred or discharged, the nursing home must develop a discharge plan which provides comprehensive information allowing for continuity of care in the resident's new home.

The Virginia Nursing Home Survival Guide

If a resident requires intermittent hospitalization or therapy outside of the nursing home, for whatever reason, the nursing home must provide the resident with a written copy of its bed hold policy. Specifically, the nursing home must inform the resident how long it will hold the bed and how much the bed hold will cost.