

**YOUR  
RIGHTS AS A  
NURSING HOME  
RESIDENT**

**In New York State**

**And Nursing Home  
Responsibilities**

**June 2010**

# RESIDENT RIGHTS

As a nursing home resident, you have the right to:

- Dignity, respect and a comfortable living environment
- Quality of care and treatment without discrimination
- Freedom of choice to make your own, independent decisions
- The safeguard of your property and money
- Safeguards in admission transfer and discharge
- Privacy in communications
- Participate in organizations and activities of your choice
- An easy to use and responsive complaint procedure
- Exercise all of your rights without fear of reprisals.

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# INTRODUCTION

State and federal regulations require nursing homes to have written policies covering the rights of residents.

The nursing home's staff must implement these policies and explain them to you.

Any person requiring nursing home care should be able to enter any nursing home and receive appropriate care, be treated with courtesy and enjoy continued civil and legal rights.

This booklet describes your rights and the responsibilities nursing homes have for ensuring those rights.

The basic right of any nursing home resident is to be treated with dignity and respect. All other rights support this basic premise.

The New York State Department of Health is committed to ensuring that every nursing home resident's rights are protected and supported.

This booklet is designed to provide information so that residents, and their loved ones, are aware of these rights. It is important that residents and their representatives communicate regularly with nursing home staff to ensure a meaningful, respectful, and helpful environment.

# DIGNITY AND RESPECT

## RESIDENT RIGHTS

### **You have the right to:**

- ❖ be treated with dignity, respect and consideration at all times;
- ❖ privacy in the treatment and care of your personal needs;
- ❖ choose activities, schedules and health care consistent with your interests and plan of care;
- ❖ communicate with and have access to people and services inside and outside the facility;
- ❖ be consulted when the facility sets policies about your rights and responsibilities and about aspects of your life in the facility;
- ❖ staff assistance in interpretation of your rights.

## NURSING HOME RESPONSIBILITY

### **The nursing home must:**

- ❖ ensure that you are treated as an individual and encourage you to participate in programs and services of your choice;
- ❖ provide you with safe, clean and comfortable rooms and surroundings;
- ❖ protect you from any kind of harsh and abusive treatment;
- ❖ provide you privacy in communicating and associating with people of your choice;

# ADMISSION

## RESIDENT RIGHTS

### **You have the right to:**

- ❖ nondiscrimination in admissions;
- ❖ equal access to quality care;
- ❖ apply for Medicare or Medicaid benefits;
- ❖ the absence of a guarantee of payment from another person or source other than yourself for admission or continued stay.

## NURSING HOME RESPONSIBILITY

### **The nursing home must:**

- ❖ provide you with access to quality care by exercising identical policies and practices covering the provision of all required services, regardless of your source of payment;
- ❖ obey all pertinent state and local laws that prohibit discrimination against individuals entitled to Medicaid benefits, and give explicit advice to you concerning your right to nondiscriminatory treatment in admissions (State regulations prohibit discrimination against individuals entitled to Medicaid benefits);
- ❖ fully inform you and your designated representative both verbally and in writing (in a language that you understand) of your rights and all facility rules and regulations governing your conduct and your responsibilities during your stay. This information must be given to you prior to or upon admission and during your stay. You must acknowledge receipt of this information in writing. The facility must also post a summary of this information.

### **The nursing home must not:**

- ❖ require a third-party guarantee of payment as a condition of admission, expedited admission or continued stay in the facility;
- ❖ charge, solicit, accept or receive (in addition to any amount otherwise required to be paid by third-party payors) any gift, money donation or other consideration as a precondition of admission, expedited admission, special room assignment or continued stay in the facility, beyond the amount needed for prepayment of basic services for up to three months;
- ❖ require you to waive your rights to Medicare or Medicaid;
- ❖ require verbal or written assurance that you are not eligible for, or will not apply for, Medicare or Medicaid benefits.

### **The nursing home may:**

- ❖ require a relative or other designated representative to sign a contract to provide facility payment from your income or resources, without your representative incurring personal financial liability;
- ❖ charge you, if you are eligible for Medicaid, only for those items and services you requested and received that are not specified at the time of admission as included in the nursing home's basic services;
- ❖ solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to you, provided that the contribution is not a condition of admission, expedited admission, special room assignment or continued stay in the facility.

# LIFE AT THE FACILITY

## RESIDENT RIGHTS

**You may always exercise your rights as a citizen or resident of the United States and New York State, including your right to:**

- ❖ vote, with arrangements made by the facility;
- ❖ action for damages or other relief for deprivations or infringements of your right to adequate and proper treatment and care;
- ❖ exercise your civil and religious liberties, including the right to independent personal decisions and knowledge of available choices;
- ❖ be free from verbal, sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints except those restraints authorized in accordance with nursing home minimum standards; this includes but is not limited to doctor's orders, specified time periods, close monitoring, periodic re-evaluation of need, conferring with a family member or designated representative and documentation in the record;
- ❖ meet with and participate in activities of social, religious and community groups at your discretion.

### Resident Council

- ❖ you have the right to participate in the established resident council at the facility.

### Access to Information

#### **You have the right to:**

- ❖ examine the results of the most recent federal or state survey of the facility including any statement of deficiencies, any plan of correction in effect with respect to the facility and any enforcement actions taken by the New York State Department of Health (Results must be made available for examination in a place readily accessible to you);
- ❖ receive information from agencies acting as residents' advocates and be

given the opportunity to contact these agencies;

- ❖ request, or have a designated representative request, and be provided information concerning your specific assignment to a resident classification category for purposes of linking reimbursement to the intensity of your care;
- ❖ inspect, upon verbal or written notice, within 24 hours records pertaining to you, and with two working days' notice purchase and receive photocopies of such records. The cost of reproduction may not exceed 75 cents per page.

## Grievances

### **You have the right to:**

- ❖ voice grievances without discrimination or reprisal;
- ❖ prompt resolution of your grievances including those with respect to the behavior of other residents;
- ❖ recommend changes in policies and services to facility staff and/or outside representatives, free of interference, coercion, discrimination, restraint or reprisal from the facility.

## Privacy

### **You have the right to:**

- ❖ locked storage space upon request in your room;
- ❖ share a room with your spouse, relative or partner when the spouse, relative or partner lives in the same facility and you both consent to the arrangement;
- ❖ be assured of privacy for visits when a spouse, relative or partner resides outside the facility;
- ❖ retain, store securely and use personal possessions, including furnishings, and appropriate clothing, as space permits, provided the rights or health and safety of other residents are not infringed.

## Food/Nutrition

### **You have the right to:**

- ❖ receive kosher food or food products, upon request, when as a matter of religious belief you wish to observe Jewish dietary laws.

## Work/Services

### **You have the right to:**

- ❖ perform services only when:
  - (1) you can safely perform the services;
  - (2) the facility documents the need or desire for work in your plan of care;
  - (3) the plan specifies the nature of the services performed and whether the services are voluntary or paid (Compensation for the paid services must be at or above prevailing rates and you must agree to the work arrangement described in your plan of care);
  - (4) refuse to perform services for the facility.

## NURSING HOME RESPONSIBILITY

### **The nursing home must:**

- ❖ furnish you with a written description of your legal rights including:
  - (1) a description of how the facility protects your personal funds;
  - (2) a statement telling you that you may file a complaint with the facility or the New York State Department of Health concerning resident abuse, neglect, mistreatment and misappropriation of your property in the facility (This statement must include the name, address and telephone number of the office established by the New York State Department of Health to receive complaints and of the New York State Office for the Aging Ombudsman Program);
- ❖ record and periodically update the address and telephone number of your designated representative or interested family member;

- ❖ provide immediate access to you by:
  - (1) any representative of the U.S. Secretary of Health and Human Services;
  - (2) any representative of the New York State Department of Health;
  - (3) your own doctor;
  - (4) ombudsmen who are duly certified and designated by the New York State Office for the Aging;
  - (5) representatives of the Commission on Quality of Care and Advocacy for Persons with Disabilities (which protects and advocates for developmentally disabled individuals and mentally ill individuals); and
  - (6) other individuals who are visiting, with your consent, subject to reasonable restrictions and your right to deny or withdraw consent at any time;
  
- ❖ provide reasonable access to you by an entity or individual that provides health, social, legal or other services, subject to your right to deny or withdraw consent at any time;
  
- ❖ encourage your voluntary choice of activities and assist you in the participation of all social activities in which you wish to engage by:
  - (1) transporting you to and from in-house activities as needed;
  - (2) encouraging you to participate in and helping maintain your involvement in community, religious and/or social activities including the organization of trips outside the facility;
  - (3) posting a copy of the monthly activities schedule and providing you with a copy upon request.
  
- ❖ Advise veterans and the spouses of veterans in writing of the contact numbers for the NYS Division of Veterans Affairs, the nearest Veterans Service Agency and the nearest accredited Veterans Service Officer.

## Resident Council

### **The nursing home must:**

- ❖ encourage you to participate in the facility's resident council and encourage you to take part in decision-making processes and make recommendations that could improve the quality of life in the facility;

- ❖ ensure that you receive resident council meeting notices and that you are given assistance in transport to and from meetings, if such assistance is needed;
- ❖ describe and promote the function and organization of the resident council to maximize your participation;
- ❖ after consultation with the resident council, assign to the council a staff person who is acceptable to the members of the resident council;
- ❖ ensure that members of the governing body make themselves available to hold meetings with representatives of the resident council at least three times a year to discuss matters contained in a jointly developed agenda;
- ❖ ensure that the Quality Assessment and Assurance Committee provides consultation on at least a quarterly basis with the resident council to seek recommendations on quality improvements.

## Family Council

- ❖ when a family council exists, inform families of the existence of the council upon admission and at least quarterly. The notice should include the dates, times and place of the family council meetings and a person to contact regarding involvement in the council.

## Access to Information

### **The nursing home must:**

- ❖ promptly notify you when there is:
  - (1) a change in your room assignment (This requires prior notice unless you requested or agreed to the change, your medical condition requires a more immediate change, an emergency situation develops or there is a need to alter your treatment significantly. Then, you must be immediately informed, your doctor consulted and your designated representative or an interested family member notified);
  - (2) a change in roommate assignment (This must be acceptable, where possible, to all affected residents);
  - (3) a change in resident rights under federal or state law or regulations as specified in the Official Compilation of Codes, Rules and Regulations of the State of New York;

- ❖ inform you of the facility's visiting hour policies, which are to be in compliance with the New York State Department of Health mandates for residential health care facilities (at least 10 hours within a 24-hour period, including at least two meal periods) and which must be posted.

## Grievances

The nursing home must:

- ❖ inform you upon your admission about the complaint and recommendation procedure;
- ❖ ensure that a method is in place to respond within 21 days to your complaints or grievances and recommendations.

## Privacy

### **The nursing home must:**

- ❖ arrange for you to share a room with your spouse, relative or partner when you are both residents in the facility and both consent to the shared arrangement;
- ❖ ensure privacy for visits by your spouse, relative or partner if they do not reside in the facility;
- ❖ provide you space for storage and placement of your personal possessions as follows:
  - (1) possessions may include some furnishings if such meet government fire safety and health code regulations;
  - (2) if sufficient storage space is not available in your room, your possessions may be stored in other areas of the facility (if such space is available) at the option of the nursing home or the home will help you find other space;
- ❖ provide a lockable drawer and/or locked storage area (upon your request) in your room or within your immediate area. Staff should help you store your possessions.

## Food/Nutrition

### **The nursing home must:**

- ❖ provide kosher food or food products prepared in accordance with orthodox Jewish religious requirements when, as a matter of religious belief, you wish to observe Jewish dietary laws;
- ❖ offer substitute menu items at your request;
- ❖ provide assistance with eating and special eating equipment or assistive devices and utensils if needed.

## Work/Services

### **The nursing home must:**

- ❖ accept your request to perform services, when work is available, under the following conditions:
  - (1) you must make your request known to the facility staff, nursing staff or doctor;
  - (2) your need or desire for work must be documented in your plan of care, along with the nature of the services to be performed, whether or not you are deemed able to safely perform the work described, whether or not you will be compensated for your services, and whether or not you have signed the work arrangement described in your plan of care, showing your agreement with it;
  - (3) you must be compensated for your work at or above the prevailing rate for like services.

# CLINICAL CARE AND TREATMENT

## RESIDENT RIGHTS

### **You have the right to:**

- ❖ adequate and appropriate medical care, including nursing, rehabilitation therapies, social work, dental and other professional services for which you have been assessed to show need;
- ❖ be fully informed by a doctor in a language or a form that you can understand (using an interpreter when necessary) of your total health status, including but not limited to your medical condition including diagnosis, prognosis and treatment plan;
- ❖ ask questions about your medical condition and have the questions answered;
- ❖ refuse to participate in experimental research;
- ❖ a second opinion if you disagree with the diagnosis or treatment being provided; you or your designated representative may call in a consultant (you may have to pay for this visit);
- ❖ appoint someone you trust, such as a family member or close friend, to be your health care agent to decide about treatment if you lose the ability to decide for yourself;
- ❖ provide advance directives, such as a living will or other verbal or written instructions, about important health care decisions, like the withdrawal of life-sustaining treatment;
- ❖ have a surrogate make health care decisions on your behalf should you lose decision-making capacity and have not appointed a health care agent by filling out a health care proxy;
- ❖ refuse medication and treatment and discharge yourself from the facility should you so choose, after being fully informed and understanding the probable consequences of such actions;

- ❖ choose a personal attending doctor from among those who agree to abide by all applicable federal and state regulations and who are permitted to practice in the facility;
- ❖ be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect your well-being;
- ❖ participate in planning your care and treatment or changes in your care and treatment;
- ❖ self-administer drugs only if the facility's interdisciplinary medical team has determined that this practice is safe.

## NURSING HOME RESPONSIBILITY

### **The nursing home must:**

- ❖ use chemical and physical restraints only if necessary for medical reasons and ordered by your doctor and, except in an emergency situation, obtain your consent or the consent of your designated representative who has legal authority to give such consent;
- ❖ inform you of the name, office address, telephone number and specialty of the doctor responsible for your personal care;
- ❖ inform you prior to admission that your doctor or dentist must be affiliated with the facility in order to practice there;
- ❖ promptly respond to requests by your personal attending doctors or dentists to be approved to attend to you;
- ❖ inform you (except in a medical emergency) immediately and consult your physician and designated representative or an interested family member when there is:
  - (1) an accident involving you that results in injury;
  - (2) a significant improvement in your physical, mental or psychosocial status, in accordance with generally accepted standards of care and services;
  - (3) a need to alter treatment significantly;
  - (4) a decision to transfer or discharge you from the facility;

- ❖ discharge you from the facility, should you so choose, after fully informing you of the probable consequences of such action;
- ❖ provide you with information, a Health Care Proxy form and assistance to decide about advance directives and designation of a health care agent;
- ❖ provide you with all information you may need to give informed consent for a “Do Not Resuscitate” order and comply with the New York State provisions regarding orders not to resuscitate;
- ❖ provide you with CPR if you wish;
- ❖ comply with the Family Health Care Decisions Act and allow surrogate decision-making on behalf of a resident who lacks decision-making capacity and does not have a health care agent under a health care proxy. A surrogate is a spouse (if not legally separated from the resident) or domestic partner; adult child; parent; adult sibling; or close friend.
- ❖ furnish to you, upon your request, a copy of the New York State Department of Health brochure entitled “Deciding About Health Care: A Guide for Patients and Families.”

# PRIVACY AND CONFIDENTIALITY

## RESIDENT RIGHTS

### **You have the right to:**

- ❖ privacy and confidentiality of your personal and clinical records which reflect accommodations, medical treatment, written and telephone communications, personal care, associations and communications with people of your choice, visits and meetings of family and resident groups;
- ❖ private meeting space for you and your family;
- ❖ approve or refuse the release of personal and clinical records to any individual outside the facility except when you are transferred to another health care facility or when record release is required by law or health insurance company contract;
- ❖ privacy in written communications, including the right to send and receive unopened mail promptly;
- ❖ access to stationery, postage and writing implements (at your own expense);
- ❖ regular access to the use of a telephone where calls can be made without being overheard and which is wheelchair accessible and usable by residents who are visually and hearing impaired.

## NURSING HOME RESPONSIBILITY

### **The nursing home must:**

- ❖ ensure that you have privacy in accommodations, medical treatment, personal care, visits and meetings of family, friends and resident groups;
- ❖ ensure that your mail is delivered to you unopened and that it is sent out unopened;
- ❖ provide you, upon your request, with stationery, postage and writing materials (to be paid for by you) and assist you in reading or writing mail if you so request;

- ❖ provide you, upon your request, with access to a telephone (and assist you in its use) that is private and, if necessary, wheelchair accessible and equipped for the hearing impaired or the visually impaired;
- ❖ instruct all staff and assure that all staff adhere to its instructions to fully honor and maintain your right to approve or refuse to approve release of your personal and clinical records to any outside individual;
- ❖ instruct all staff involved in your care to maintain your personal and clinical record in the strictest privacy. Staff must restrict discussion of your medical, mental and psychosocial problems to appropriate forums only, for example, at facility interdisciplinary care team conferences or unit conferences. Staff must not discuss or otherwise divulge your medical, mental and psychosocial problems with any other resident, even though discussion may be initiated by the other resident.

# FINANCES

## RESIDENT RIGHTS

### **You have the right to:**

- ❖ at the time of admission, a written copy and explanation of the facility's basic services;
- ❖ manage your own financial affairs or, in writing, authorize the facility to manage your personal finances in accordance with specific requirements, such as those governing resident interest-bearing accounts;
- ❖ refuse to deposit your personal funds with the facility;
- ❖ request your complete financial record and have the facility provide it to you within one business day;
- ❖ request an assessment which will determine nonexempt resources of you and your spouse at the time of admission, and will give your spouse, if he or she is living in the community, an equitable share of resources which cannot be used to pay for your care as you spend down to Medicaid eligibility levels.

## NURSING HOME RESPONSIBILITY

### **The nursing home must:**

- ❖ provide the following information to you if you are entitled to Medicaid benefits:
  - (1) a list of the items and services included in nursing home services under the New York State plan and for which you may not be charged (see glossary for included services);
  - (2) a list of any other items and services that the facility offers and for which you may be charged, and the amount of charges for those items and services (the facility must inform you when changes are made in these lists);
- ❖ inform you verbally and in writing, before the time of admission, and periodically when changes occur during your stay, of services available in

the facility and of the charges for those services, including any charges for services not covered by sources of third-party payment or by the facility's basic daily rate;

- ❖ prominently display written information in the facility and provide verbal and written information to residents and potential residents about:
  - (1) how to apply for and use Medicare and Medicaid benefits, and
  - (2) how to receive refunds for previous payments covered by such benefits;
- ❖ not require you to deposit your personal funds with the facility;
- ❖ refund promptly any amount or proportion of repayment in excess of the amount used for services in the event you leave the facility prior to the end of the prepayment period for reasons beyond your control;
- ❖ deposit your funds in excess of \$50 in an interest-bearing account separate from any of the facility's operating accounts;
- ❖ upon request, provide an assessment which will determine nonexempt resources of you and your spouse at the time of admission, and will give your spouse, if he or she is living in the community, an equitable share of resources which cannot be used to pay for your care as you spend down to Medicaid eligibility levels;
- ❖ upon request, inform you or your designated representative about funds held in account through quarterly statements;
- ❖ make available to you or your designated representative your individual financial record within one business day of a request;
- ❖ upon your death, convey within 30 days your personal funds deposited with the facility and a final accounting of those funds to the individual or probate jurisdiction administering your estate;
- ❖ if you are a private pay resident, give you a 30-day notice for any change in rate and, if you request, provide you with documentation explaining any additional charges.

# TRANSFER AND DISCHARGE

## RESIDENT RIGHTS

### **You have the right to:**

- ❖ transfer to another room in the facility if you wish;
- ❖ be given 30 days notice before transfer or discharge, except in cases where the resident is at risk of harming themselves or others, when the resident could be discharged earlier;
- ❖ file an appeal to the New York State Department of Health in response to an involuntary transfer or discharge, for which a hearing can be held under the auspices of the Department;
- ❖ examine your own medical records;
- ❖ remain in the facility pending the appeal determination;
- ❖ a post-transfer hearing within 30 days of transfer if you did not request a hearing prior to transfer; if you win the appeal you will return to the first available bed in the facility;
- ❖ retain your bed if you have been involuntarily transferred until after the appeal decision is reached;
- ❖ information such as the name, address and telephone number of the New York State Department of Health, the New York State Long Term Care Ombudsman and the Commission on Quality of Care and Advocacy for Persons with Disabilities.

## NURSING HOME RESPONSIBILITY

### **The nursing home may transfer or discharge you:**

- ❖ only after the interdisciplinary care team, in consultation with you, determines:
  - (1) that the transfer or discharge is necessary for your welfare and your needs cannot be met after reasonable attempts at accommodation at the facility;
  - (2) that the transfer or discharge is appropriate because your health has improved sufficiently to the point where you no longer need the services provided by the facility;
  - (3) your health or safety or the health or safety of other individuals in the facility would otherwise be endangered and all reasonable alternatives to transfer or discharge have been explored and have failed to safely address the problem;
  
- ❖ when you have failed to pay for a stay at the facility after having received reasonable and appropriate notice from the facility or to have paid under Medicare, Medicaid or third-party insurance. For failure to pay, such transfer or discharge is permissible only if:
  - (1) a charge is not in dispute;
  - (2) no appeal of a denial of benefits is pending; or
  - (3) funds for payment are available, but you refuse to cooperate with the facility in obtaining them;
  
- ❖ when it discontinues operation and has received approval of its plan of closure from the New York State Department of Health.

### **The nursing home must:**

- ❖ inform you and your designated representative, verbally and in writing, about bed reservation and readmission regulations at the time of your admission to the facility and again at the time of your transfer for any reason and/or for therapeutic leave;
  
- ❖ readmit you, if you have been in residence at least 30 days, as soon as the first bed becomes available in a semi-private room if you were hospitalized, transferred or discharged on therapeutic leave without being given a bed hold when you require the services provided by the facility and are eligible for Medicaid;
  
- ❖ completely document in your clinical records the reasons for the move;

- ❖ before transferring or discharging you, notify you and a family member or designated representative both verbally and in writing (in a language and manner you understand) of the transfer or discharge and the reasons for it;
- ❖ include in its written notice of transfer or discharge to you the following:
  - (1) a statement about your right to appeal to the New York State Department of Health, including the telephone number for the Department that can initiate an appeal;
  - (2) the name, address and telephone number of the state long term care ombudsman;
  - (3) if you are mentally ill or developmentally disabled, the mailing address and telephone number of the Commission on Quality of Care and Advocacy for Persons with Disabilities, the agency that can advocate for you;
- ❖ provide its notice of transfer or discharge to you at least 30 days prior to the expected date of transfer or discharge or, provide its notice to you as soon as practicable before transfer or discharge when:
  - (1) the health or safety of individuals in the facility would be endangered;
  - (2) your health improves sufficiently to allow a more immediate transfer or discharge;
  - (3) an immediate transfer or discharge is required by your urgent medical needs; or
  - (4) the transfer or discharge is made in compliance with your request;
- ❖ provide sufficient preparation and orientation to you to ensure safe and orderly transfer or discharge from the facility, including an opportunity for you to participate in deciding where to go;
- ❖ provide information to assist you in appealing a transfer or discharge by:
  - (1) seeing to it that you contact the appropriate state agency;
  - (2) calling upon your doctor and the facility staff to help you in examining and reviewing your medical records;
  - (3) working with the New York State Department of Health to making certain that the appeals determination is held, and that you are present if you desire;

# REQUIRED POSTINGS

**Nursing homes in New York State must post the following information in the facility, in a location easily accessible to residents and the public:**

- ❖ Summary of residents' rights and all rules and regulations governing resident conduct and responsibilities;
- ❖ Information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits;
- ❖ Information about advance directives or written instructions concerning important health care decisions, health care proxy and designation of a health care agent;
- ❖ A schedule of the facility's current monthly activities;
- ❖ The facility's visiting hours;
- ❖ The date and time the facility will assess residents to determine the intensity of their needs;
- ❖ The date and time the New York State Department of Health auditors will visit the facility to audit the Patient Review Instrument;
- ❖ A statement that each resident has the right to know to which reimbursement category he or she has been assigned by the facility;
- ❖ The person to contact in the facility for more information about resident assessment categories and reimbursement;
- ❖ A New York State Division of Human Rights nondiscrimination regulatory poster (must be displayed in the Admissions Office).
- ❖ Ensure that residents, employees or other person(s) may file complaints with or provide information to any long term care patient Ombudsman

The home shall make available for examination the results of the most recent survey of the facility conducted by federal or State surveyors including any statement of deficiencies, any plan of correction in effect with respect to the facility and any enforcement actions taken by the Department of Health. They

shall be made available in a place readily accessible to residents and designated representatives without staffing assistance.

# FOR FURTHER INFORMATION

## CENTRALIZED COMPLAINT INTAKE PROGRAM

The New York State Department of Health's Centralized Complaint Intake hotline may be used 24 hours a day, seven days a week, to report concerns about nursing home care.

Centralized Complaint Intake Program  
161 Delaware Avenue  
Delmar, New York 12054  
1-(888)-201-4563

## NURSING HOME REGIONAL OFFICES

During normal business hours (Monday-Friday 8:30am - 4:30pm), you may also contact the Health Department office in your area at the address and telephone number below:

Capital District Regional Office  
Frear Building-2nd floor  
Fulton Street  
Troy, New York 12180-3298  
(518) 408-5300

Covering these counties: Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington

Western Region  
Buffalo Office  
584 Delaware Avenue  
Buffalo, New York 14202-1295  
(716) 847-4320

Covering these counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming

Rochester Office  
335 East Main Street  
Rochester, New York 14604  
(585) 423-8020

Covering these counties: Chemung, Livingston, Monroe, Ontario, Seneca, Schuyler, Steuben, Wayne, Yates

Central New York Regional Office

217 South Salina Street  
Syracuse, New York 13202-3592  
(315) 426-7696

Covering these counties: Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins

Metropolitan Area Regional Office  
New York City Office  
90 Church Street, 15th Floor, LTCP/NH  
New York, New York 10007-2919  
(212) 417-4999

Covering the five boroughs of New York: Bronx, Brooklyn (Kings County), Manhattan (New York County), Queens, Staten Island (Richmond County)

New Rochelle Office  
145 Huguenot Street-6th floor  
New Rochelle, New York 10801-5291  
(914) 654-7058

Covering these counties: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester

Long Island Office  
Court House Corporate Center  
320 Carlton Avenue, Suite 5000  
Central Islip, New York 11722  
(631) 851-3606  
Covering these counties: Nassau, Suffolk

### LONG TERM CARE OMBUDSMAN PROGRAM

Long Term Care Ombudsman Program  
(800) 342-9871

The Long Term Care Ombudsman Program is a federal advocacy program dedicated to protecting people living in long term care facilities. In New York State, the Office for the Aging operates the program through its Office of the State Long Term Care Ombudsman. Ombudsmen spend an average of four to six hours a week in each of their assigned facilities, advocating for the residents.

New York State Office for the Aging (New York City)  
(212) 962-2720

## ADDITIONAL RESOURCES

The Commission on Quality of Care and Advocacy for Persons with Disabilities  
(800) 624-4143

The Commission on Quality of Care and Advocacy for Persons with Disabilities is responsible for the protection and advocacy system for developmentally disabled individuals and mentally ill individuals.

New York State Insurance Department  
(800) 342-3736

# GLOSSARY

**Advance Directives**—A verbal or written instruction plan in advance of incapacitating illness or injury which ensures that the resident's wishes about treatment will be followed for a short or long period of time. This includes but is not limited to a health care proxy, an order not to resuscitate recorded in the resident's medical record and a living will.

**Baseline Services** - Those services included in the daily rate. At the time of admission, a written copy of the following basic services must be made available to all residents:

- ❖ the daily, weekly or monthly rate;
- ❖ board, including therapeutic or modified diets, as prescribed by a doctor;
- ❖ lodging - a clean, healthful, sheltered environment, properly outfitted;
- ❖ dietary services;
- ❖ 24-hour-per-day nursing care;
- ❖ pharmacy services;
- ❖ diagnostic services;
- ❖ the use of all equipment, medical supplies and modalities used in the care of nursing home residents, including but not limited to catheters, hypodermic syringes and needles, irrigation outfits, dressings and pads, etc.;
- ❖ fresh bed linen, as required, changed at least twice weekly, including sufficient quantities of necessary bed linen or appropriate substitutes changed as often as required for incontinent residents;
- ❖ hospital gowns or pajamas as required by the clinical condition of the resident, unless the resident, family member or designated representative elects to furnish them, and laundry services for these and other launderable personal clothing items;
- ❖ general household medicine cabinet supplies, including but not limited nonprescription medications, materials for routine skin care, dental hygiene, care of hair, etc., except when specific items are medically indicated and prescribed for exceptional use for a specific resident;
- ❖ assistance and/or supervision, when required, with activities of daily living, including but not limited to toileting, bathing, feeding and assistance with getting from place to place;
- ❖ services, in the daily performance of their assigned duties, by members of the nursing home staff assigned to resident care;
- ❖ use of customarily stocked equipment, including but not limited to crutches, walkers, wheelchairs or other supportive equipment, including training in their use when necessary, unless such items are prescribed by a doctor for regular and sole use by a specific resident;
- ❖ activities program, including but not limited to a planned schedule of recreational, motivational, social and other activities together with the necessary materials and supplies to make the resident's life more meaningful;

- ❖ social services as needed;
- ❖ provision of optician and optometrist services;
- ❖ physical therapy, occupational therapy, speech pathology services, audiology services and dental services, on either a staff or fee-for-services basis, as prescribed by a doctor, administered by or under the direct supervision of a licensed and currently registered physical therapist, occupational therapist, speech pathologist, qualified audiologist or registered dentist.

Special Services - These services may be offered in addition to those considered standard.

- ❖ Adult Day Health Care (ADHC) - ADHC program provides the health care services and activities provided to a group of persons, who are not residents of a residential health care facility, but are functionally impaired and not homebound. Require supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative or palliative care or services but do not require continuous 24-hour-a-day inpatient care and services to maintain their health status and enable them to remain in the community.

Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation. It must also provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment, planned activities, ongoing assessment of each registrant's health status in order to provide coordinated care planning, case management and other health care services as determined by the registrant's needs.

- ❖ Adult Day Health Care – AIDS - An adult day health care program may be approved as a provider of specialized services for registrants with AIDS (acquired immune deficiency syndrome), and other human immunodeficiency virus (HIV) related illness. The program shall provide comprehensive and coordinated health services and the operator must provide or make arrangements for case management services; substance abuse services, if appropriate; mental health services; HIV prevention and counseling services; pastoral counseling; TB screening and on-going follow up, and specialized medical services including gynecology, as needed.
- ❖ AIDS - The facility shall provide comprehensive and coordinated health services and the operator must provide or make arrangements for: case management services; substance abuse services, if appropriate; mental health services; HIV prevention and counseling services; pastoral counseling; TB screening and on-going follow up, and specialized medical services including gynecology, as needed.

- ❖ Behavioral Intervention Services - This program must include a discrete unit with a planned combination of services with staffing, equipment and physical facilities designed to serve individuals whose severe behavior cannot be managed in a less restrictive setting. The program shall provide goal-directed, comprehensive and interdisciplinary services directed at attaining or maintaining the individual at the highest practicable level of physical, affective, behavioral and cognitive functioning.
- ❖ Clinical Laboratory Service - Clinical laboratory means a facility for the microbiological, immunological, chemical, hematological, biophysical, cytological, pathological, genetic or other examination of materials derived from the human body, for the purpose of obtaining information for the diagnosis, prevention or treatment of disease, or the assessment of a health condition, or for identification purposes. Such examinations shall include procedures to determine, measure, or otherwise describe the presence or absence of various substances, components or organisms in the human body.
- ❖ Coma Services - A resident admitted for coma management shall be a person who has suffered a traumatic brain injury with structural non-degenerative brain damage, and is in a coma. The resident may be completely unresponsive to any stimuli or may exhibit a generalized response by reacting inconsistently and non-purposefully to stimuli in a nonspecific manner.
- ❖ Dementia Programs - Dementia programs seek to improve the quality and treatment of patients with dementia. Architectural designs and interior finishes are required to implement special programs for residents with dementia. Staff are trained to manage behavior and promote effective care of dementia patients by arranging the environment in ways that produce positive outcomes for patients. Special activities are offered to the residents with the goal of maintaining and promoting autonomy and decision making on the part of dementia patients.
- ❖ Diagnostic Radiology - When this service is provided, the operator shall ensure that: the radiographic procedures requiring the use of contrast media or fluoroscopic interpretation and control are performed with the active participation of a qualified specialist in diagnostic radiology or a physician qualified in a medical specialty related to the radiographic procedure.
- ❖ Hospice - Hospice shall mean a coordinated program of home and inpatient care which treats the terminally ill patient and family as a unit, employing an interdisciplinary team acting under the direction of an autonomous hospice administration. The program provides palliative and supportive care to meet the special needs arising out of physical,

psychological, spiritual, social and economic stresses which are experienced during the final stages of illness, and during dying and bereavement.

A resident of a nursing home who becomes terminally ill may receive hospice services. In order to establish eligibility for hospice care, the patient's physician and the hospice medical director must certify that the patient is terminally ill, the patient or authorized representative must elect the hospice benefit in writing, and a hospice plan of care must be established. Terminal illness is defined as a medical life expectancy of six months or less if the illness runs its normal course.

- ❖ Limited Transfusion Services - Limited transfusion service means a facility, which transfuses blood and may temporarily store blood and distribute it within its own organization, but relies on a blood bank holding a permit in blood services-transfusion to perform laboratory tests.
- ❖ Outpatient Services
  - ❖ Occupational Therapy - This consists of instructing patients in prescribed academic subjects to prevent mental deconditioning, improving patients' mental and physical conditions and aiding in the attainment of knowledge and skills that will further residents' progress toward vocational objectives.
  - ❖ Physical Therapy - Physical therapy employs therapeutic exercises and massage and utilizing effective properties of heat, light, cold water and electricity for diagnosis and rehabilitation of patients with neuromuscular, orthopedic and other impairments. Such services are provided in a coordinated and integrated program under the direction and prescription of a physician or a registered physical therapist. Additional activities include but are not limited to the following: the provision of clinical and consultative services; the direction of patients in the use, function and care of braces, artificial limbs and other devices; prescribing therapeutic exercises; counseling patients and their relatives; organizing and conducting medically prescribed physical therapy programs; applying diagnostic muscle tests; administering whirlpool and compact baths; changing linen on physical therapy department beds and treatment tables; assisting patients in changing clothes and other personal needs and participating in discharge coordination.
  - ❖ Speech Pathology - Rehabilitation services shall be made available, only at the direction of a physician, to eligible persons as medically needed and as an integral part of a comprehensive medical care program. Such services include not only service to the patient but also

instructions to responsible members of the family in follow-up procedures necessary for the care of the patient.

- ❖ Pediatric - The facility provides extensive age specific nursing, medical, psychological and counseling support services to children with diverse and complex medical, emotional and social problems in a program recognized and approved by the department to provide these services.
- ❖ Respite Care Services (Short Term) - Scheduled short term nursing home care provided on a temporary basis to an individual who needs this level of care, but who is normally cared for in the community. The goal of scheduled short term care is to provide relief for the caregiver(s) while providing nursing home care for the individual. Schedules for scheduled short term care are generally pre-arranged and shall be limited to one or more periods of from one to 30 days and shall not exceed 42 days in any one year except in extraordinary circumstances, such as sudden illness of the primary caregiver or temporary unfitness of the individual's principal residence.
- ❖ Traumatic Brain-Injured (TBI) - A planned combination of specialized services provided in a nursing home unit for head-injured residents, where the unit consists of at least 20 beds. The head-injury program shall be designed specifically to serve medically stable, traumatically brain-injured individuals with an expected length of stay from 3 to 12 months. The program shall provide goal-oriented, comprehensive, interdisciplinary and coordinated services directed at restoring the individual to the optimal level of physical, cognitive and behavioral functioning. The population served shall consist primarily of individuals with traumatically acquired, non-degenerative, structural brain damage resulting in residual deficits and disability. The program shall not admit or retain individuals who are determined to be a danger to self or others.

A resident admitted for long-term rehabilitation shall be a person who has suffered a traumatic brain injury with structural non-degenerative brain damage, is medically stable, is not in a persistent vegetative state, demonstrates potential for physical, behavioral and cognitive rehabilitation and may evidence moderate to severe behavior abnormalities. The resident must be capable of exhibiting at least localized responses by reacting specifically but inconsistently to stimuli; education and counseling services are available and offered to the residents and families

- ❖ Ventilator Dependent - This program is intended to serve long-term ventilator dependent residents. Services shall be directed at restoring each resident to his or her optimal level of functioning and assisting each resident to achieve maximum independence from mechanical ventilation.

Residents shall be assessed as to their ability to be weaned from their ventilatory dependence. Those residents who are assessed as potentially able to be weaned from dependence on support with mechanical ventilation or whose daily use of ventilator support may be reduced shall receive an active program of therapy and other supportive services designed for that resident to reduce or eliminate his or her need for use of a ventilator.

Residents shall be assessed as to their ability to be discharged to home or to a home-like setting with or without supportive services. When such potential is identified, the facility shall initiate an active program of therapy and other supportive services designed to assist the resident in the transition to the new setting. Facility discharge planning staff shall arrange for any home modifications, equipment or assistance expected to be required of the resident in the new setting.

**Designated Representative** —The individual or individuals designated to receive information and to assist and/or act on behalf of a particular resident to the extent permitted by New York State law. This is not the same as a health care agent. The designation occurs by a court of law if sought; by the resident if he or she has the capacity to make such a designation; or by family members and other parties who have an interest in the well-being of the resident. The name of the designated representative must be noted in the resident's clinical record at the facility.

The designated representative:

- (1) receives any written and verbal information required to be provided to the resident if the resident lacks the capacity to understand or make use of the information, and receives any information required to be provided to both the resident and the Designated Representative;
- (2) participates (to the extent authorized by New York State law) in decisions and choices regarding the care, treatment and well-being of the resident if such resident lacks the capacity to make decisions and choices.

**Family Health Care Decisions Act – Public Health Law 29-CC:** A New York State law that provides legal authority for surrogate consent to any type of health care decision for residents who cannot make their own decisions and who do not have a health care agent under a health care proxy.

**Governing Body**—The policymaking body of the facility, the board of directors or trustees of the facility or the proprietor or proprietors of a nursing home.

**Health Care Agent**—Someone appointed by the resident he or she trusts to decide about treatment if the resident becomes unable to decide for himself or herself. The resident has the right to appoint someone by filling out a form called

a Health Care Proxy. These forms should be available at the facility.

**Health Care Proxy**—A document that delegates the authority to another individual known as a Health Care Agent to make health care decisions on behalf of the resident when that resident is incapacitated.

**Nursing Home**—A facility (subject to Article 28 of the New York State Public Health Law) providing lodging for 24 or more consecutive hours to three or more nursing home residents who are not related to the facility operator by marriage or by blood, who need regular nursing services or other professional services, but who do not need the services of a general hospital.

**Quality Assessment and Assurance Committee**—A committee consisting of at least the facility administrator (or designee), director of nursing, a doctor designated by the facility, at least one member of the governing body (not affiliated with the nursing home in an employment or contractual capacity) and at least three other facility staff members, meeting at least quarterly to oversee the effectiveness of monitoring, assessing and problem-solving activities for purposes of initiating quality improvements designed to advance the quality of life, care and services in the facility. The committee meets quarterly with the resident council to seek recommendations or quality improvements.

**Resident**—An individual who has been admitted to and who resides in a nursing home (facility) and is entitled to receive care, treatment and services required by New York State Law.

**Resident Care Unit (or nursing unit)**—A designated area that includes a group of resident rooms and adequate supporting rooms, areas, facilities, services and personnel providing nursing care and management of residents that is planned, organized, operated and maintained to function as a unit so as to encourage the efficient delivery of resident services and effective observation of and communication with facility residents.

**Resident Council**—The organization created by residents of a nursing home and recognized by the facility as the group that represents the interests of its members.

**Sponsor**—The agency or people, other than the resident, responsible in whole or in part for the financial support of the resident, including the costs of care in the facility.

**Surrogate** – A person who makes health care decisions on behalf of a resident who lacks decision-making capacity and who does not have a health care agent

under a health care proxy. Surrogates are prioritized as follows: a spouse (if not legally separated from the resident) or domestic partner; adult child, parent, adult sibling; close friend.