

Resident Bill of Rights

MINNESOTA NURSING HOME AND BOARDING CARE HOME

Legislative Intent

It is the intent of the Legislature and the purpose of this statement to promote the interests and well-being of the residents of nursing homes and boarding care homes¹. No nursing home or boarding care home may require a resident to waive these rights as a condition of admission to the facility. Any guardian or conservator of a resident or, in the absence of a guardian or conservator, an interested person, may seek enforcement of these rights on behalf of a resident. An interested person may also seek enforcement of these rights on behalf of a resident who has a guardian or conservator through administrative agencies or in district court having jurisdiction over guardianships and conservatorships. Pending the outcome of an enforcement proceeding the nursing or boarding care home may, in good faith, comply with the instructions of a guardian or conservator. It is the intent of this law that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the nursing or boarding

¹ In this document, the word "facility" refers to nursing home or boarding care home.

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care home shall encourage and assist in the fullest possible exercise of these rights.

Definitions

For the purposes of this statement, “resident” means a person who is admitted to a nonacute care facility including extended care facilities, nursing homes, and boarding care homes for care required because of prolonged mental or physical illness or disability, recovery from injury or disease, or advancing age.

Public Policy Declaration

It is declared to be the public policy of this state that the interests of each resident be protected by a declaration of a bill of rights which shall include but not be limited to the rights specified in this statement.

Information about Rights

Residents shall, at admission, be told that there are legal rights for their protection during their stay at the nursing or boarding care home throughout their course of treatment and maintenance in the community and that these are described in an accompanying written statement of the applicable rights and responsibilities set forth in this section. Reasonable accommodations shall be made for people who have communication disabilities and those who speak a language other than English. Current facility policies, inspection findings of state and local health authorities, and further explanation of the written statement of rights shall be available to residents,

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their guardians or their chosen representatives upon reasonable request to the administrator or other designated staff person, consistent with Minnesota Statutes chapter 13, the Data Practices Act, and section 626.557, relating to vulnerable adults.

Courteous Treatment

Residents have the right to be treated with courtesy and respect for their individuality by employees of or persons providing service in a nursing or boarding care home.

Appropriate Health Care

Residents shall have the right to appropriate medical and personal care based on individual needs. Appropriate care means care designed to enable residents to achieve their highest level of physical and mental functioning. This right is limited where the service is not reimbursable by public or private resources.

Physician's Identity

Residents shall have or be given, in writing, the name, business address, telephone number, and specialty, if any, of the physician responsible for coordination of their care. In cases where it is medically inadvisable, as documented by the attending physician in a resident's care record, the information shall be given to the resident's guardian or other person designated by the resident as his or her representative.

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Relationship with Other Health Services

Residents who receive services from an outside provider are entitled, upon request, to be told the identity of the provider. Residents shall be informed, in writing, of any health care services which are provided to those residents by individuals, corporations, or organizations other than the nursing or boarding care home. Information shall include the name of the outside provider, the address, and a description of the service which may be rendered. In cases where it is medically inadvisable, as documented by the attending physician in a resident's care record, the information shall be given to the resident's guardian or other person designated by the resident as a representative.

Information about Treatment

Residents shall be given by their physicians complete and current information concerning their diagnosis, treatment, alternatives, risks and prognosis as required by the physician's legal duty to disclose. This information shall be in terms and language the residents can reasonably be expected to understand. Residents may be accompanied by a family member or other chosen representative, or both. This information shall include the likely medical or major psychological results of the treatment and its alternatives. In cases where it is medically inadvisable, as documented by the attending physician in a resident's medical record, the information shall be given to the resident's guardian or other person designated by the resident as a representative. Individuals have the right to refuse this information.

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Every resident suffering from any form of breast cancer shall be fully informed, prior to or at the time of admission and during her stay, of all alternative effective methods of treatment of which the treating physician is knowledgeable, including surgical, radiological, or chemotherapeutic treatments or combinations of treatments and the risks associated with each of those methods.

Participation in Planning Treatment

Notification of Family Members:

1. Residents shall have the right to participate in the planning of their health care. This right includes the opportunity to discuss treatment and alternatives with individual caregivers, the opportunity to request and participate in formal care conferences, and the right to include a family member or other chosen representative, or both. In the event that the resident cannot be present, a family member or other representative chosen by the resident may be included in such conferences.
2. If a resident who enters a nursing or boarding care home is unconscious or comatose or is unable to communicate, the facility shall make reasonable efforts as required under paragraph 3 to notify either a family member or a person designated in writing by the patient as the person to contact in an emergency that the resident has been admitted to the nursing or boarding care home. The nursing or boarding care home shall allow the family member to participate in treatment planning, unless the facility knows or has reason to believe the resident has an effective advance directive to

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the contrary or knows the resident has specified in writing that they do not want a family member included in treatment planning. After notifying a family member but prior to allowing a family member to participate in treatment planning, the nursing or boarding care home must make reasonable efforts, consistent with reasonable medical practice, to determine if the resident has executed an advance directive relative to the resident's health care decisions. For purposes of this paragraph, "reasonable efforts" include:

- A. examining the personal effects of the resident;
 - B. examining the medical records of the resident in the possession of the facility;
 - C. inquiring of any emergency contact or family member contacted whether the resident has executed an advance directive and whether the resident has a physician to whom the resident normally goes for care; and
 - D. inquiring of the physician to whom the resident normally goes for care, if known, whether the resident has executed an advance directive. If a nursing or boarding care home notifies a family member or designated emergency contact or allows a family member to participate in treatment planning in accordance with this paragraph, the facility is not liable to the resident for damages on the grounds that the notification of the family member or emergency contact or the participation of the family member was improper or violated the privacy rights.
3. In making reasonable efforts to notify a family member or designated emergency contact, the nursing or boarding care

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home shall attempt to identify family members or a designated emergency contact by examining the personal effects of the resident and the medical records of the resident in the possession of the facility. If the nursing or boarding care home is unable to notify a family member or designated emergency contact within 24 hours after the admission, the nursing or boarding care home shall notify the county social service agency or local law enforcement agency that the resident has been admitted and the facility has been unable to notify a family member or designated emergency contact. The county social service agency and local law enforcement agency shall assist the nursing or boarding care home in identifying and notifying a family member or designated emergency contact. A county social service agency or local law enforcement agency that assists a nursing or boarding care home is not liable to the resident for damages on the grounds that the notification of the family member or emergency contact or the participation of the family member was improper or violated the privacy rights.

Continuity of Care

Residents shall have the right to be cared for with reasonable regularity and continuity of staff assignment as far as nursing or boarding care home policy allows.

Right to Refuse Care

Competent residents shall have the right to refuse treatment based on the information required under the section above titled "Information about Treatment". Residents who refuse

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treatment, medication, or dietary restrictions shall be informed of the likely medical or major psychological results of the refusal, with documentation in the individual medical record. In cases where a resident is incapable of understanding the circumstances but has not been adjudicated incompetent, or when legal requirements limit the right to refuse treatment, the conditions and circumstances shall be fully documented by the attending physician in the resident's medical record.

Experimental Research

Written, informed consent must be obtained prior to resident's participation in experimental research. Residents have the right to refuse participation. Both consent and refusal shall be documented in the individual care record.

Treatment Privacy

Residents shall have the right to respectfulness and privacy as it relates to their medical and personal care program. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Privacy shall be respected during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance.

Confidentiality of Records

Residents shall be assured confidential treatment of their personal and medical records, and may approve or refuse their release to any individual outside the nursing or boarding care

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home. Residents shall be notified when personal records are requested by any individual outside the nursing or boarding care home and may select someone to accompany them when the records or information are the subject of a personal interview. Copies of records and written information from the records shall be made available in accordance with this subdivision and Minnesota Health Records Act, sections 144.291 to 144.298. This right does not apply to complaint investigations and inspections by the Department of Health, where required by third party payment contracts, or where otherwise provided by law.

Disclosure of Services Available

Residents shall be informed, prior to or at the time of admission and during their stay, of services which are included in the nursing or boarding care home's basic per diem or daily room rate and that other services are available at additional charges. Nursing or boarding care homes shall make every effort to assist residents in obtaining information regarding whether the Medicare or Medical Assistance program will pay for any or all of the aforementioned services.

Responsive Service

Residents shall have the right to a prompt and reasonable response to their questions and requests.

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Personal Privacy

Residents shall have the right to every consideration of their privacy, individuality, and cultural identity as related to their social, religious, and psychological well-being. Nursing or boarding care home staff shall respect the privacy of a resident's room by knocking on their door and seeking consent before entering, except in an emergency or where clearly inadvisable.

Communication Privacy

Residents may associate and communicate privately with persons of their choice and enter and, except as provided by the Minnesota Commitment Act, leave the nursing or boarding care home as they choose. Residents shall have access, at their expense, to writing instruments, stationery, and postage. Personal mail shall be sent without interference and received unopened unless medically or programmatically contraindicated and documented by the physician in the medical record. There shall be access to a telephone where residents can make and receive calls as well as speak privately. Nursing or boarding care homes which are unable to provide a private area shall make reasonable arrangements to accommodate the privacy of residents' calls. Upon admission to a nursing or boarding care home where federal law prohibits unauthorized disclosure of resident identifying information to callers and visitors, the resident, or the legal guardian or conservator of the resident, shall be given the opportunity to authorize disclosure of the resident's presence in the nursing or boarding care home to callers and visitors who may seek to

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communicate with the resident. To the extent possible, the legal guardian or conservator of a resident shall consider the opinions of the resident regarding the disclosure of the resident's presence in the nursing or boarding care home. This right is limited where medically inadvisable, as documented by the attending physician in a resident's care record. Where programmatically limited by a facility abuse prevention plan pursuant to the Vulnerable Adults Protection Act, Section 626.557, Subdivision 14, Paragraph (b), this right shall also be limited accordingly.

Personal Property

Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, and unless medically or programmatically contraindicated for documented medical, safety, or programmatic reasons. The nursing or boarding care home must either maintain a central locked depository or provide individual locked storage areas in which residents may store their valuables for safekeeping. The nursing or boarding care home may, but is not required to, provide compensation for or replacement of lost or stolen items.

Services for the Facility

Residents shall not perform labor or services for the nursing or boarding care home unless those activities are included for therapeutic purposes and appropriately goal-related in their individual medical record.

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Choice of Supplier

Residents may purchase or rent goods or services not included in the per diem rate from a supplier of their choice unless otherwise provided by law. The supplier shall ensure that these purchases are sufficient to meet the medical or treatment needs of the residents.

Financial Affairs

Competent residents may manage their personal financial affairs, or shall be given at least a quarterly accounting of financial transactions on their behalf if they delegate this responsibility in accordance with the laws of Minnesota to the facility for any period of time.

Right to Associate

1. Residents may meet with and receive visitors and participate in activities of commercial, religious, political, as defined in section 203B.11 (Absentee Voting) and community groups without interference at their discretion if the activities do not infringe on the right to privacy of other residents or are not programmatically contraindicated. This includes:
 - A. the right to join with other individuals within and outside the facility to work for improvements in long-term care;
 - B. the right to visitation by an individual the patient has appointed as the patient's health care agent under chapter 145C;

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- C. the right to visitation and health care decision making by an individual designated by the patient under paragraph 3.
2. Upon admission to a nursing or boarding care home where federal law prohibits unauthorized disclosure of resident identifying information to callers and visitors, the resident, or the legal guardian or conservator of the resident, shall be given the opportunity to authorize disclosure of the resident's presence in the nursing or boarding care home to callers and visitors who may seek to communicate with the resident. To the extent possible, the legal guardian or conservator of a resident shall consider the opinions of the resident regarding the disclosure of the resident's presence in the facility.
 3. Upon admission to a nursing or boarding care home, the resident or the legal guardian or conservator of the resident, must be given the opportunity to designate a person who is not related who will have the status of the resident's next of kin with respect to visitation and making a health care decision. A designation must be included in the health record. With respect to making a health care decision, a health care directive or appointment of a health care agent under chapter 145C prevails over a designation made under this paragraph. The unrelated person may also be identified as such by the resident or by the resident's family.

Advisory Councils

Residents and their families shall have the right to organize, maintain, and participate in resident advisory and family councils. Each nursing or boarding care home shall provide

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assistance and space for meetings. Council meetings shall be afforded privacy, with staff or visitors attending only upon the council's invitation. A staff person shall be designated the responsibility of providing this assistance and responding to written requests which result from council meetings. Resident and family councils shall be encouraged to make recommendations regarding nursing or boarding care home policies.

Married Residents

Residents, if married, shall be assured privacy for visits by their spouses and, if both spouses are residents of the nursing or boarding care home, they shall be permitted to share a room, unless medically contraindicated and documented by their physicians in the medical records.

Transfers and Discharges

Residents shall not be arbitrarily transferred or discharged. Residents must be notified, in writing, of the proposed discharge or transfer and its justification no later than 30 days before discharge from the nursing or boarding care home and seven days before transfer to another room within the nursing or boarding care home. This notice shall include the resident's right to contest the proposed action, with the address and telephone number of the area Ombudsman for Long Term Care pursuant to the Older Americans Act, section 307(a) (12). The resident, informed of this right, may choose to relocate before the notice period ends. The notice period may be shortened in situations outside the nursing or boarding care home's control,

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such as a determination by utilization review, the accommodation of newly admitted residents, a change in the resident's medical or treatment program, the resident's own or another resident's welfare, or nonpayment for stay unless prohibited by the public program or programs paying for the resident's care, as documented in the medical record. Nursing or boarding care homes shall make a reasonable effort to accommodate new residents without disrupting room assignments.

Protection and Advocacy Services

Residents shall have the right of reasonable access at reasonable times to any available rights protection services and advocacy services so that the resident may receive assistance in understanding, exercising, and protecting the rights described in this Bill of Rights and in other law. This right shall include the opportunity for private communication between the resident and a representative of the rights protection service or advocacy service.

Restraints

1. Competent nursing home residents, family members of residents who are not competent, and legally appointed conservators, guardians, and health care agents as defined under section 145C.01, have the right to request and consent to the use of a physical restraint in order to treat the medical symptoms of the resident.
2. Upon receiving a request for a physical restraint, a nursing home shall inform the resident, family member, or legal

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representative of alternatives to and the risks involved with physical restraint use. The nursing home shall provide a physical restraint to a resident only upon receipt of a signed consent form authorizing restraint use and a written order from the attending physician that contains statements and determinations regarding medical symptoms and specifies the circumstances under which restraints are to be used.

3. A nursing home providing a restraint under paragraph 2 must:
 - A. document that the procedures outlined in that paragraph have been followed;
 - B. monitor the use of the restraint by the resident; and
 - C. periodically, in consultation with the resident, the family, and the attending physician, reevaluate the resident's need for the restraint.
4. A nursing home shall not be subject to fines, civil money penalties, or other state or federal survey enforcement remedies solely as the result of allowing the use of a physical restraint as authorized in this subdivision. Nothing in this subdivision shall preclude the commissioner from taking action to protect the health and safety of a resident if:
 - A. the use of the restraint has jeopardized the health and safety of the resident; and
 - B. the nursing home failed to take reasonable measures to protect the health and safety of the resident.
5. For purposes of this subdivision, "medical symptoms" include:

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- A. a concern for the physical safety of the resident; and
- B. physical or psychological needs expressed by a resident. A resident's fear of falling may be the basis of a medical symptom.

A written order from the attending physician that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical necessity of the physical restraint.

6. When determining nursing facility compliance with state and federal standards for the use of physical restraints, the commissioner of health is bound by the statements and determinations contained in the attending physician's order regarding medical symptoms. For purposes of this order, "medical symptoms" include the request by a competent resident, family member of a resident who is not competent, or legally appointed conservator, guardian, or health care agent as defined under section 145C.01, that the facility provide a physical restraint in order to enhance the physical safety of the resident.

Freedom from Maltreatment

Residents shall be free from maltreatment as defined in the Vulnerable Adults Protection Act. "Maltreatment" means conduct described in Section 626.5572, Subdivision 15, or the intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress. Every resident shall also be free from nontherapeutic chemical and physical restraints, except in fully documented emergencies, or as authorized in writing after

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examination by a resident's physician for a specified and limited period of time, and only when necessary to protect the resident from self-injury or injury to others.

Grievances

Residents shall be encouraged and assisted, throughout their stay in a nursing or boarding care home or their course of treatment, to understand and exercise their rights as residents and citizens. Residents may voice grievances and recommend changes in policies and services to nursing or boarding care home staff and others of their choice, free from restraint, interference, coercion, discrimination, or reprisal, including threat of discharge. Notice of the grievance procedure of the facility or program, as well as addresses and telephone numbers for the Office of Health Facility Complaints and the area Ombudsman for Long Term Care pursuant to the Older Americans Act, Section 307 (a)(12) shall be posted in a conspicuous place.

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RESOURCES

OFFICE OF HEALTH FACILITY COMPLAINTS

P.O. Box 64970

St. Paul, MN 55164-0970

(800) 369-7994 or (651) 201-4200 (metro)

OMBUDSMAN FOR LONG-TERM CARE

PO Box 64971

St. Paul, MN 55164-0971

(800) 657-3591 or (651) 431-2555 (metro)

MINNESOTA DEPARTMENT OF HEALTH

Health Regulation Division

PO Box 64900

St. Paul, MN 55164-0900

(651) 201-4101

THE DEVELOPMENTALLY DISABLED ADVOCACY PROJECT

The Mental Health Law Project

430 First Avenue North, Suite 300

Minneapolis, MN 55401-1780

(800) 292-4150 or (612) 332-1441 (metro)

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SURVEILLANCE & INTEGRITY REVIEW SERVICES

(Medicaid Fraud and Abuse – payment issues)

Minnesota Department of Human Services

PO Box 64982

St. Paul, MN 55164-0982

(800) 657-3750 or (651) 431-2650 (metro)

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*To obtain this information
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651 201-4101*