



FEDERAL & OHIO  
**RESIDENT RIGHTS  
& FACILITY  
RESPONSIBILITIES**

*Provided as a service of the Ohio Health Care Association*



# FEDERAL RESIDENT RIGHTS & FACILITY RESPONSIBILITIES

**It is the facility's policy to abide by all resident rights, and to communicate these rights to residents and their designated representatives in a language that they can understand.**

**Nursing facility residents are granted specific rights under Federal law pursuant to Title 42 of the Code of Federal Regulations section 483.10. We have duplicated and organized this regulation on the pages that follow for your easy reference. We believe that this law is written in an understandable manner. However, if you have any questions or concerns about these rights or our responsibilities, please let us know so that we can further assist your understanding.**

**If you have any questions, please contact the facility's administrator.**

- (a) **Residents Rights.** The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility, including those specified in this section.
- (1) **Dignity, Respect & Quality of Life.** A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident.
  - (2) **Equal Access.** The facility must provide equal access to quality care regardless of diagnosis, severity of condition, or payment source. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all residents regardless of payment source.
- (b) **Exercise of rights.** The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
- (1) **No Interference.** The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility
  - (2) **Support by Facility.** The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights as required under this subpart.
  - (3) **Resident Representative (If Resident Not Incompetent).** In the case of a resident who has not been adjudged incompetent by the state court, the resident has the right to designate a representative, in accordance with State law and any legal surrogate so designated may exercise the resident's rights to the extent provided by state law. The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.
    - (i) The resident representative has the right to exercise the resident's rights to the extent those rights are delegated to the resident representative.

- (ii) The resident retains the right to exercise those rights not delegated to a resident representative, including the right to revoke a delegation of rights, except as limited by State law.
- (4) **Representative Decisions Equivalent to Resident's.** The facility must treat the decisions of a resident representative as the decisions of the resident to the extent required by the court or delegated by the resident, in accordance with applicable law.
- (5) **Limitation to Representative Decisions.** The facility shall not extend the resident representative the right to make decisions on behalf of the resident beyond the extent required by the court or delegated by the resident, in accordance with applicable law.
- (6) **Representative Making Bad Decisions.** If the facility has reason to believe that a resident representative is making decisions or taking actions that are not in the best interests of a resident, the facility shall report such concerns in the manner required under State law.
- (7) **Resident Representative (If Resident Incompetent).** In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident devolve to and are exercised by the resident representative appointed under State law to act on the resident's behalf. The court-appointed resident representative exercises the resident's rights to the extent judged necessary by a court of competent jurisdiction, in accordance with State law
  - (i) In the case of a resident representative whose decision-making authority is limited by State law or court appointment, the resident retains the right to make those decision outside the representative's authority.
  - (ii) The resident's wishes and preferences must be considered in the exercise of rights by the representative.
  - (iii) To the extent practicable, the resident must be provided with opportunities to participate in the care planning process.

- (c) **Planning and Implementing Care.** The resident has the right to be informed of, and participate in, his or her treatment, including:
- (1) **Information Regarding Health Status.** The right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.
  - (2) **Participation in Plan of Care.** The right to participate in the development and implementation of his or her person-centered plan of care, including but not limited to:
    - (i) The right to participate in the planning process, including the right to identify individuals or roles to be included in the planning process, the right to request meetings and the right to request revisions to the person-centered plan of care.
    - (ii) The right to participate in establishing the expected goals and outcomes of care, the type, amount, frequency, and duration of care, and any other factors related to the effectiveness of the plan of care.
    - (iii) The right to be informed, in advance, of changes to the plan of care.
    - (iv) The right to receive the services and/or items included in the plan of care.
    - (v) The right to see the care plan, including the right to sign after significant changes to the plan of care.
  - (3) **Participation in Treatment.** The facility shall inform the resident of the right to participate in his or her treatment and shall support the resident in this right. The planning process must—
    - (i) Facilitate the inclusion of the resident and/or resident representative.
    - (ii) Include an assessment of the resident’s strengths and needs.
    - (iii) Incorporate the resident’s personal and cultural preferences in developing goals of care.
  - (4) **Information Regarding Care and Care Giver.** The right to be informed, in advance, of the care to be furnished and the type of care giver or professional that will furnish care.

- (5) **Treatment Options and Alternatives.** The right to be informed in advance, by the physician or other practitioner or professional, of the risks and benefits of proposed care, of treatment and treatment alternatives or treatment options and to choose the alternative or option he or she prefers.
  - (6) **Refusal of Treatment.** The right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive.
  - (7) **Self-Administration of Medications.** The right to self-administer medications if the interdisciplinary team, as defined by §483.21(b)(2)(ii), has determined that this practice is clinically appropriate.
  - (8) **No Right to Medically Unnecessary or Inappropriate Treatment.** Nothing in this paragraph should be construed as the right of the resident to receive the provision of medical treatment or medical services deemed medically unnecessary or inappropriate.
- (d) **Choice of attending physician.** The resident has the right to choose his or her attending physician.
- (1) **Licensed Physician.** The physician must be licensed to practice, and
  - (2) **Facility Right to Choose Alternate Physician.** If the physician chosen by the resident refuses to or does not meet requirements specified in this part, the facility may seek alternate physician participation as specified in paragraphs (d)(4) and (5) of this section to assure provision of appropriate and adequate care and treatment.
  - (3) **Information Regarding Physician / Primary Care Professionals.** The facility must ensure that each resident remains informed of the name, specialty, and way of contacting the physician and other primary care professionals responsible for his or her care.
  - (4) **Information If Facility Seeks an Alternate Physician.** The facility must inform the resident if the facility determines that the physician chosen by the resident is unable or unwilling to meet requirements specified in this part and the facility seeks alternate physician participation to assure provision of appropriate and adequate care and treatment. The facility must discuss the alternative physician participation with the resident and honor the resident's preferences, if any, among options.

- (5) **Resident Choice of an Alternate Physician.** If the resident subsequently selects another attending physician who meets the requirements specified in this part, the facility must honor that choice.
- (e) Respect and dignity. The resident has a right to be treated with respect and dignity, including:
- (1) **Restraints.** The right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms, consistent with §483.12(a)(2).
  - (2) **Personal Possessions.** The right to retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.
  - (3) **Reasonable Accommodation.** The right to reside and receive services in the facility with reasonable accommodation of resident needs and preferences except when to do so would endanger the health or safety of the resident or other residents.
  - (4) **Share Room with Spouse.** The right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.
  - (5) **Choice of Room / Roommate.** The right to share a room with his or her roommate of choice when practicable, when both residents live in the same facility and both residents consent to the arrangement.
  - (6) **Written Notice of Room / Roommate Change.** The right to receive written notice, including the reason for the change, before the resident's room or roommate in the facility is changed.
  - (7) **Refusal of Room Change.** The right to refuse to transfer to another room in the facility, if the purpose of the transfer is:
    - (i) To relocate a resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or
    - (ii) to relocate a resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.
    - (iii) solely for the convenience of staff.

- (8) **Refusal of Transfer: No Effect on Benefits.** A resident's exercise of the right to refuse transfer does not affect the resident's eligibility or entitlement to Medicare or Medicaid benefits.
- (f) **Self-determination.** The resident has the right to and the facility must promote and facilitate resident self-determination through support of resident choice, including but not limited to the rights specified in paragraphs (f)(1) through (11) of this section.
- (1) **Activities, Schedules, Health Care & Providers.** The resident has a right to choose activities, schedules (including sleeping and waking times), health care and providers of health care services consistent with his or her interests, assessments, plan of care and other applicable provisions of this part.
- (2) **Significant Life Aspects.** The resident has the right to make choices about aspects of his or her life in the facility that are significant to the resident.
- (3) **Community Interaction.** The resident has a right to interact with members of the community and participate in community activities both inside and outside the facility.
- (4) **Visitors.** The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.
- (i) The facility must provide immediate access to any resident by—
- (A) Any representative of the Secretary,
  - (B) Any representative of the State,
  - (C) Any representative of the Office of the State long term care ombudsman, (established under section 712 of the Older Americans Act of 1965, as amended 2016 (42 U.S.C. 3001 et seq.),
  - (D) The resident's individual physician,
  - (E) Any representative of the protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.),



- (F) Any representative of the agency responsible for the protection and advocacy system for individuals with a mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000 (42 U.S.C. 10801 et seq.), and
  - (G) The resident representative.
- (ii) The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
  - (iii) The facility must provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;
  - (iv) The facility must provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and
  - (v) The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation, when such limitations may apply consistent with the requirements of this subpart, that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation.
  - (vi) A facility must meet the following requirements:
    - (A) Inform each resident (or resident representative, where appropriate) of his or her visitation rights and related facility policy and procedures, including any clinical or safety restriction or limitation on such rights, consistent with the requirements of this subpart, the reasons for the restriction or limitation, and to whom the restrictions apply, when he or she is informed of his or her other rights under this section.
    - (B) Inform each resident of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse (including a same-sex spouse), a domestic

partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

- (C) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.
  - (D) Ensure that all visitors enjoy full and equal visitation privileges consistent with resident preferences.
- (5) **Resident Groups.** The resident has a right to organize and participate in resident groups in the facility.
- (i) The facility must provide a resident or family group, if one exists, with private space; and take reasonable steps, with the approval of the group, to make residents and family members aware of upcoming meetings in a timely manner.
  - (ii) Staff, visitors, or other guests may attend resident group or family group meetings only at the respective group's invitation.
  - (iii) The facility must provide a designated staff person who is approved by the resident or family group and the facility and who is responsible for providing assistance and responding to written requests that result from group meetings.
  - (iv) The facility must consider the views of a resident or family group and act promptly upon the grievances and recommendations of such groups concerning issues of resident care and life in the facility.
    - (A) The facility must be able to demonstrate their response and rationale for such response.
    - (B) This should not be construed to mean that the facility must implement as recommended every request of the resident or family group.
- (6) **Family Groups.** The resident has a right to participate in family groups.
- (7) **Meeting with Representatives of Other Families.** The resident has a right to have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents in the facility.

- (8) **Activities that Do Not Interfere with Other Residents.** The resident has a right to participate in other activities, including social, religious, and community activities that do not interfere with the rights of other residents in the facility.
- (9) **Services for the Facility.** The resident has a right to choose to or refuse to perform services for the facility and the facility must not require a resident to perform services for the facility. The resident may perform services for the facility, if he or she chooses, when—
- (i) The facility has documented the resident’s need or desire for work in the plan of care;
  - (ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
  - (iii) Compensation for paid services is at or above prevailing rates; and
  - (iv) The resident agrees to the work arrangement described in the plan of care.
- (10) **Management of Financial Affairs.** The resident has a right to manage his or her financial affairs. This includes the right to know, in advance, what charges a facility may impose against a resident’s personal funds.
- (i) The facility must not require residents to deposit their personal funds with the facility. If a resident chooses to deposit personal funds with the facility, upon written authorization of a resident, the facility must act as a fiduciary of the resident’s funds and hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in this section.
  - (ii) Deposit of funds.
    - (A) In general: Except as set out in paragraph (f)(10)(ii)(B) of this section, the facility must deposit any residents’ personal funds in excess of \$100 in an interest bearing account (or accounts) that is separate from any of the facility’s operating accounts, and that credits all interest earned on resident’s funds to that account. (In pooled accounts, there must be a separate accounting for each resident’s share.) The facility must maintain a resident’s personal funds that do not exceed \$100 in a non-interest bearing account, interest-bearing account, or petty cash fund.

- (B) Residents whose care is funded by Medicaid: The facility must deposit the residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.) The facility must maintain personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.
- (iii) Accounting and records.
    - (A) The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
    - (B) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
    - (C) The individual financial record must be available to the resident through quarterly statements and upon request.
  - (iv) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits—
    - (A) When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and
    - (B) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.
  - (v) Conveyance upon discharge, eviction, or death. Upon the discharge, eviction, or death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the resident, or in the case of death, the individual or probate jurisdiction administering the resident's estate, in accordance with State law.

- (vi) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

**(11) Charges to Personal Funds.** The facility must not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with §489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See §447.15 of this chapter, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

- (i) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, facilities must not charge a resident for the following categories of items and services:
  - (A) Nursing services as required at §483.35.
  - (B) Food and Nutrition services as required at §483.60.
  - (C) An activities program as required at §483.24(c).
  - (D) Room/bed maintenance services.
  - (E) Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing assistance, and basic personal laundry.
  - (F) Medically-related social services as required at §483.40(d).

- (G) Hospice services elected by the resident and paid for under the Medicare Hospice Benefit or paid for by Medicaid under a state plan.
- (ii) Items and services that may be charged to residents' funds. Paragraphs (f)(11)(ii)(A) through (L) of this section are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if they are not required to achieve the goals stated in the resident's care plan, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:
  - (A) Telephone, including a cellular phone.
  - (B) Television/radio, personal computer or other electronic device for personal use.
  - (C) Personal comfort items, including smoking materials, notions and novelties, and confections.
  - (D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.
  - (E) Personal clothing.
  - (F) Personal reading matter.
  - (G) Gifts purchased on behalf of a resident.
  - (H) Flowers and plants.
  - (I) Cost to participate in social events and entertainment outside the scope of the activities program, provided under §483.24(c).
  - (J) Non-covered special care services such as privately hired nurses or aides.
  - (K) Private room, except when therapeutically required (for example, isolation for infection control).
  - (L) Except as provided in (e)(11)(ii)(L)(1) and (2) of this section, specially prepared or alternative food requested instead of the food and meals generally prepared by the facility, as required by §483.60.

- (1) The facility may not charge for special foods and meals, including medically prescribed dietary supplements, ordered by the resident's physician, physician assistant, nurse practitioner, or clinical nurse specialist, as these are included in accordance with §483.60.
- (2) In accordance with §483.60(c) through (f), when preparing foods and meals, a facility must take into consideration residents' needs and preferences and the overall cultural and religious make-up of the facility's population.

(iii) Requests for items and services.

- (A) The facility can only charge a resident for any non-covered item or service if such item or service is specifically requested by the resident.
- (B) The facility must not require a resident to request any item or service as a condition of admission or continued stay.
- (C) The facility must inform, orally and in writing, the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

**(g) Information and communication.**

- (1) **Information Concerning Rights, Rules & Responsibilities.** The resident has the right to be informed of his or her rights and of all rules and regulations governing resident conduct and responsibilities during his or her stay in the facility.
- (2) **Access to Personal & Medical Records.** The resident has the right to access personal and medical records pertaining to him or herself.
  - (i) The facility must provide the resident with access to personal and medical records pertaining to him or herself, upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, within 24 hours (excluding weekends and holidays); and

- (ii) The facility must allow the resident to obtain a copy of the records or any portions thereof (including in an electronic form or format when such records are maintained electronically) upon request and 2 working days advance notice to the facility. The facility may impose a reasonable, cost-based fee on the provision of copies, provided that the fee includes only the cost of:
  - (A) Labor for copying the records requested by the individual, whether in paper or electronic form;
  - (B) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and
  - (C) Postage, when the individual has requested the copy be mailed.
- (3) **Understandable Information: Alternatives.** With the exception of information described in paragraphs (g)(2) and (g)(11) of this section, the facility must ensure that information is provided to each resident in a form and manner the resident can access and understand, including in an alternative format or in a language that the resident can understand. Summaries that translate information described in paragraph (g)(2) of this section may be made available to the patient at their request and expense in accordance with applicable law.
- (4) **Understandable Information: Notices.** The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands, including;
  - (i) Required notices as specified in this section. The facility must furnish to each resident a written description of legal rights which includes—
    - (A) A description of the manner of protecting personal funds, under paragraph (f)(10) of this section;
    - (B) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment of resources under section 1924(c) of the Social Security Act.
    - (C) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State regulatory and informational agencies, resident advocacy groups such as the State Survey Agency, the State licensure office, the State Long-Term Care



Ombudsman program, the protection and advocacy agency, adult protective services where state law provides for jurisdiction in long-term care facilities, the local contact agency for information about returning to the community and the Medicaid Fraud Control Unit; and

- (D) A statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the advance directives requirements and requests for information regarding returning to the community.
  - (ii) Information and contact information for State and local advocacy organizations, including but not limited to the State Survey Agency, the State Long-Term Care Ombudsman program (established under section 712 of the Older Americans Act of 1965, as amended 2016 (42 U.S.C. 3001 et seq.) and the protection and advocacy system (as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 t seq.);
  - (iii) Information regarding Medicare and Medicaid eligibility and coverage;
  - (iv) Contact information for the Aging and Disability Resource Center (established under Section 202(a)(20)(B)(iii) of the Older Americans Act); or other No Wrong Door Program
  - (v) Contact information for the Medicaid Fraud Control Unit; and
  - (vi) Information and contact information for filing grievances or complaints concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the advance directives requirements and requests for information regarding returning to the community.
- (5) **Required Postings.** The facility must post, in a form and manner accessible and understandable to residents, and resident representatives:

- (i) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State agencies and advocacy groups, such as the State Survey Agency, the State licensure office, adult protective services where state law provides for jurisdiction in long-term care facilities, the Office of the State Long-Term Care Ombudsman program, the protection and advocacy network, home and community based service programs, and the Medicaid Fraud Control Unit; and
  - (ii) A statement that the resident may file a complaint with the State Survey Agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, exploitation, misappropriation of resident property in the facility, non-compliance with the advance directives requirements (42 CFR part 489 subpart I) and requests for information regarding returning to the community.
- (6) **Telephone.** The resident has the right to have reasonable access to the use of a telephone, including TTY and TDD services, and a place in the facility where calls can be made without being overheard. This includes the right to retain and use a cellular phone at the resident's own expense.
- (7) **Internal & External Communication.** The facility must protect and facilitate that resident's right to communicate with individuals and entities within and external to the facility, including reasonable access to:
- (i) A telephone, including TTY and TDD services;
  - (ii) The internet, to the extent available to the facility; and
  - (iii) Stationery, postage, writing implements and the ability to send mail.
- (8) **Mail & Deliveries.** The resident has the right to send and receive mail, and to receive letters, packages and other materials delivered to the facility for the resident through a means other than a postal service, including the right to:
- (i) Privacy of such communications consistent with this section; and
  - (ii) Access to stationery, postage, and writing implements at the resident's own expense.

- (9) **Electronic Communications: Access & Privacy.** The resident has the right to have reasonable access to and privacy in their use of electronic communications such as email and video communications and for Internet research.
- (i) If the access is available to the facility
  - (ii) At the resident's expense, if any additional expense is incurred by the facility to provide such access to the resident.
  - (iii) Such use must comply with state and federal law.
- (10) **Examination of Survey Results / Client Advocates.** The resident has the right to—
- (i) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility; and
  - (ii) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.
- (11) **Survey Results: Posting & Access.** The facility must—
- (i) Post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility.
  - (ii) Have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years, and any plan of correction in effect with respect to the facility, available for any individual to review upon request; and
  - (iii) Post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.
  - (iv) The facility shall not make available identifying information about complainants or residents.
- (12) **Advance Directives.** The facility must comply with the requirements specified in 42 CFR part 489, subpart I (Advance Directives).

- (i) These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, formulate an advance directive.
  - (ii) This includes a written description of the facility's policies to implement advance directives and applicable State law.
  - (iii) Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met.
  - (iv) If an adult individual is incapacitated at the time of admission and is unable to receive information or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's resident representative in accordance with State law.
  - (v) The facility is not relieved of its obligation to provide this information to the individual once he or she is able to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.
- (13) **Medicare & Medicaid Benefits.** The facility must display in the facility written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.
- (14) **Notification of changes.**
- (i) A facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with his or her authority, the resident representative(s), when there is—
    - (A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;
    - (B) A significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

- (C) A need to alter treatment significantly (that is, a need to discontinue or change an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or
  - (D) A decision to transfer or discharge the resident from the facility as specified in §483.15(c)(1)(ii).
- (ii) When making notification under paragraph (g)(14)(i) of this section, the facility must ensure that all pertinent information specified in §483.15(c)(2) is available and provided upon request to the physician.
  - (iii) The facility must also promptly notify the resident and the resident representative, if any, when there is—
    - (A) A change in room or roommate assignment as specified in §483.10(e)(6); or
    - (B) A change in resident rights under Federal or State law or regulations as specified in paragraph (e)(10) of this section.
  - (iv) The facility must record and periodically update the address (mailing and email) and phone number of the resident representative(s).
- (15) **Admission to a Composite Distinct Part.** A facility that is a composite distinct part (as defined in §483.5 must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under §483.15(c)(9).
- (16) **Notice of Rights.** The facility must provide a notice of rights and services to the resident prior to or upon admission and during the resident's stay.
- (i) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility.
  - (ii) The facility must also provide the resident with the State-developed notice of Medicaid rights and obligations, if any.
  - (iii) Receipt of such information, and any amendments to it, must be acknowledged in writing;

**(17) Information Regarding Medicaid.** The facility must—

- (i) Inform each Medicaid-eligible resident, in writing, at the time of admission to the nursing facility and when the resident becomes eligible for Medicaid of—
  - (A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;
  - (B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and
- (ii) Inform each Medicaid-eligible resident when changes are made to the items and services specified in §483.10(g)(17)(i)(A) and (B) of this section.

**(18) Available Services & Charges.** The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare/Medicaid or by the facility's per diem rate.

- (i) Where changes in coverage are made to items and services covered by Medicare and/or by the Medicaid State plan, the facility must provide notice to residents of the change as soon as is reasonably possible.
- (ii) Where changes are made to charges for other items and services that the facility offers, the facility must inform the resident in writing at least 60 days prior to implementation of the change.
- (iii) If a resident dies or is hospitalized or is transferred and does not return to the facility, the facility must refund to the resident, resident representative, or estate, as applicable, any deposit or charges already paid, less the facility's per diem rate, for the days the resident actually resided or reserved or retained a bed in the facility, regardless of any minimum stay or discharge notice requirements.
- (iv) The facility must refund to the resident or resident representative any and all refunds due the resident within 30 days from the resident's date of discharge from the facility.

- (v) The terms of an admission contract by or on behalf of an individual seeking admission to the facility must not conflict with the requirements of these regulations.
- (h) **Privacy and confidentiality.** The resident has a right to personal privacy and confidentiality of his or her personal and medical records.
  - (1) **Scope of Personal Privacy.** Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.
  - (2) **Oral, Written & Electronic Communications.** The facility must respect the residents right to personal privacy, including the right to privacy in his or her oral (that is, spoken), written, and electronic communications, including the right to send and promptly receive unopened mail and other letters, packages and other materials delivered to the facility for the resident, including those delivered through a means other than a postal service.
  - (3) **Personal & Medical Records.** The resident has a right to secure and confidential personal and medical records.
    - (i) The resident has the right to refuse the release of personal and medical records except as provided at §483.70(i)(2) or other applicable federal or state laws.
    - (ii) The facility must allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident’s medical, social, and administrative records in accordance with State law.
  - (i) Safe environment. The resident has a right to a safe, clean, comfortable and homelike environment, including but not limited to receiving treatment and supports for daily living safely. The facility must provide—
    - (1) **Safe, Clean, Comfortable & Homelike Environment.** A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible.
    - (i) This includes ensuring that the resident can receive care and services safely and that the physical layout of the facility maximizes resident independence and does not pose a safety risk.

- (ii) The facility shall exercise reasonable care for the protection of the resident's property from loss or theft.
  - (2) Housekeeping & Maintenance Services. Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;
  - (3) Bed & Bath Linens. Clean bed and bath linens that are in good condition;
  - (4) Closet Space. Private closet space in each resident room, as specified in §483.90(d)(2)(iv);
  - (5) Lighting. Adequate and comfortable lighting levels in all areas;
  - (6) Temperature. Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81°F; and
  - (7) Sound. For the maintenance of comfortable sound levels.

(j) **Grievances.**

- (1) **No Discrimination or Reprisal.** The resident has the right to voice grievances to the facility or other agency or entity that hears grievances without discrimination or reprisal and without fear of discrimination or reprisal. Such grievances include those with respect to care and treatment which has been furnished as well as that which has not been furnished, the behavior of staff and of other residents; and other concerns regarding their LTC facility stay.
- (2) **Resolution of Grievances.** The resident has the right to and the facility must make prompt efforts by the facility to resolve grievances the resident may have, in accordance with this paragraph.
- (3) **Information Regarding Filing.** The facility must make information on how to file a grievance or complaint available to the resident.
- (4) **Grievance Policy.** The facility must establish a grievance policy to ensure the prompt resolution of all grievances regarding the residents' rights contained in this paragraph. Upon request, the provider must give a copy of the grievance policy to the resident. The grievance policy must include:



- (i) Notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances orally (meaning spoken) or in writing; the right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed, that is, his or her name, business address (mailing and email) and business phone number; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding his or her grievance; and the contact information of independent entities with whom grievances may be filed, that is, the pertinent State agency, Quality Improvement Organization, State Survey Agency and State Long-Term Care Ombudsman program or protection and advocacy system;
- (ii) Identifying a Grievance Official who is responsible for overseeing the grievance process, receiving and tracking grievances through to their conclusion; leading any necessary investigations by the facility; maintaining the confidentiality of all information associated with grievances, for example, the identity of the resident for those grievances submitted anonymously; issuing written grievance decisions to the resident; and coordinating with state and federal agencies as necessary in light of specific allegations;
- (iii) As necessary, taking immediate action to prevent further potential violations of any resident right while the alleged violation is being investigated;
- (iv) Consistent with §483.12(c)(1), immediately reporting all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider, to the administrator of the provider; and as required by State law;
- (v) Ensuring that all written grievance decisions include the date the grievance was received, a summary statement of the resident's grievance, the steps taken to investigate the grievance, a summary of the pertinent findings or conclusions regarding the resident's concern(s), a statement as to whether the grievance was confirmed or not confirmed, any corrective action taken or to be taken by the facility as a result of the grievance, and the date the written decision was issued;

- (vi) Taking appropriate corrective action in accordance with State law if the alleged violation of the residents' rights is confirmed by the facility or if an outside entity having jurisdiction, such as the State Survey Agency, Quality Improvement Organization, or local law enforcement agency confirms a violation of any of these residents' rights within its area of responsibility; and
  - (vii) Maintaining evidence demonstrating the results of all grievances for a period of no less than 3 years from the issuance of the grievance decision.
- (k) Contact with external entities. A facility must not prohibit or in any way discourage a resident from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal or state health department employees, including representatives of the Office of the State Long-Term Care Ombudsman, and any representative of the agency responsible for the protection and advocacy system for individuals with mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000 (42 U.S.C. 10801 et seq.), regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action. FEDERAL & OHIO

# OHIO RESIDENT RIGHTS & FACILITY RESPONSIBILITIES

**It is the facility's policy to abide by all resident rights, and to communicate these rights to residents and their designated representatives in a language that they can understand.**

**Nursing facility residents are granted specific rights under Ohio law pursuant to sections 3721.10 to 3721.17 of the Ohio Revised Code. We have duplicated and organized these laws on the pages that follow for your easy reference. We believe that these laws are written in an understandable manner. However, if you have any questions or concerns about these rights or our responsibilities, please let us know so that we can further assist your understanding.**

**If you have any questions, please contact the facility's administrator.**

## **Residents' rights; sponsor may protect rights. (§ 3721.13).**

- (A) The rights of residents of a home shall include, but are not limited to, the following:
- (1) **Safe & Clean Living Environment.** The right to a safe and clean living environment pursuant to the Medicare and Medicaid programs and applicable state laws and regulations prescribed by the public health council;
  - (2) **Abuse / Respect.** The right to be free from physical, verbal, mental, and emotional abuse and to be treated at all times with courtesy, respect, and full recognition of dignity and individuality;
  - (3) **Appropriate Care & Treatment.** Upon admission and thereafter, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted. This care shall be provided without regard to considerations such as race, color, religion, national origin, age, or source of payment for care.
  - (4) **Response to Requests.** The right to have all reasonable requests and inquiries responded to promptly;
  - (5) **Clothes & Bed Sheet Changes.** The right to have clothes and bed sheets changed as the need arises, to ensure the resident's comfort or sanitation;
  - (6) **Information About People Responsible for Care.** The right to obtain from the home, upon request, the name and any specialty of any physician or other person responsible for the resident's care or for the coordination of care;
  - (7) **Physician Choice.** The right, upon request, to be assigned, within the capacity of the home to make the assignment, to the staff physician of the resident's choice, and the right, in accordance with the rules and written policies and procedures of the home, to select as the attending physician a physician who is not on the staff of the home. If the cost of a physician's services is to be met under a federally supported program, the physician shall meet the federal laws and regulations governing such services.

- (8) **Participation in Decisions.** The right to participate in decisions that affect the resident's life, including the right to communicate with the physician and employees of the home in planning the resident's treatment or care and to obtain from the attending physician complete and current information concerning medical condition, prognosis, and treatment plan, in terms the resident can reasonably be expected to understand; the right of access to all information in the resident's medical record; and the right to give or withhold informed consent for treatment after the consequences of that choice have been carefully explained. When the attending physician finds that it is not medically advisable to give the information to the resident, the information shall be made available to the resident's sponsor on the resident's behalf, if the sponsor has a legal interest or is authorized by the resident to receive the information. The home is not liable for a violation of this division if the violation is found to be the result of an act or omission on the part of a physician selected by the resident who is not otherwise affiliated with the home.
- (9) **Withholding Payment to Physician.** The right to withhold payment for physician visitation if the physician did not visit the resident;
- (10) **Medical Records.** The right to confidential treatment of personal and medical records, and the right to approve or refuse the release of these records to any individual outside the home, except in case of transfer to another home, hospital, or health care system, as required by law or rule, or as required by a third-party payment contract;
- (11) **Personal Privacy in Care / Treatment.** The right to privacy during medical examination or treatment and in the care of personal or bodily needs;
- (12) **Medical Research.** The right to refuse, without jeopardizing access to appropriate medical care, to serve as a medical research subject;
- (13) **Restraints.** The right to be free from physical or chemical restraints or prolonged isolation except to the minimum extent necessary to protect the resident from injury to self, others, or to property and except as authorized in writing by the attending physician for a specified and limited period of time and documented in the resident's medical record. Prior to authorizing the use of a physical or chemical

restraint on any resident, the attending physician shall make a personal examination of the resident and an individualized determination of the need to use the restraint on that resident.

Physical or chemical restraints or isolation may be used in an emergency situation without authorization of the attending physician only to protect the resident from injury to self or others. Use of the physical or chemical restraints or isolation shall not be continued for more than twelve hours after the onset of the emergency without personal examination and authorization by the attending physician. The attending physician or a staff physician may authorize continued use of physical or chemical restraints for a period not to exceed thirty days, and at the end of this period and any subsequent period may extend the authorization for an additional period of not more than thirty days. The use of physical or chemical restraints shall not be continued without a personal examination of the resident and the written authorization of the attending physician stating the reasons for continuing the restraint.

If physical or chemical restraints are used under this division, the home shall ensure that the restrained resident receives a proper diet. In no event shall physical or chemical restraints or isolation be used for punishment, incentive, or convenience.

- (14) **Pharmacist Choice & Pharmacy Pricing.** The right to the pharmacist of the resident's choice and the right to receive pharmaceutical supplies and services at reasonable prices not exceeding applicable and normally accepted prices for comparably packaged pharmaceutical supplies and services within the community;
- (15) **Civil Rights.** The right to exercise all civil rights, unless the resident has been adjudicated incompetent pursuant to Chapter 2111. of the Revised Code and has not been restored to legal capacity, as well as the right to the cooperation of the home's administrator in making arrangements for the exercise of the right to vote;
- (16) **Access to Opportunities.** The right of access to opportunities that enable the resident, at the resident's own expense or at the expense of a third-party payer, to achieve the resident's fullest potential, including educational, vocational, social, recreational, and habilitation programs;

- (17) **Alcohol.** The right to consume a reasonable amount of alcoholic beverages at the resident's own expense, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;
- (18) **Tobacco.** The right to use tobacco at the resident's own expense under the home's safety rules and under applicable laws and rules of the state, unless not medically advisable as documented in the resident's medical record by the attending physician or unless contradictory to written admission policies;
- (19) **Retiring & Rising.** The right to retire and rise in accordance with the resident's reasonable requests, if the resident does not disturb others or the posted meal schedules and upon the home's request remains in a supervised area, unless not medically advisable as documented by the attending physician;
- (20) **Religious Observation.** The right to observe religious obligations and participate in religious activities; the right to maintain individual and cultural identity; and the right to meet with and participate in activities of social and community groups at the resident's or the group's initiative;
- (21) **Communications.** The right upon reasonable request to private and unrestricted communications with the resident's family, social worker, and any other person, unless not medically advisable as documented in the resident's medical record by the attending physician, except that communications with public officials or with the resident's attorney or physician shall not be restricted. Private and unrestricted communications shall include, but are not limited to, the right to:
- (a) Receive, send, and mail sealed, unopened correspondence;
  - (b) Reasonable access to a telephone for private communications; and
  - (c) Private visits at any reasonable hour.
- (22) **Spousal Rights.** The right to assured privacy for visits by the spouse, or if both are residents of the same home, the right to share a room within the capacity of the home, unless not medically advisable

- as documented in the resident's medical record by the attending physician;
- (23) **Closed Room Door.** The right upon reasonable request to have room doors closed and to have them not opened without knocking, except in the case of an emergency or unless not medically advisable as documented in the resident's medical record by the attending physician;
- (24) **Personal Possessions.** The right to retain and use personal clothing and a reasonable amount of possessions, in a reasonably secure manner, unless to do so would infringe on the rights of other residents or would not be medically advisable as documented in the resident's medical record by the attending physician;
- (25) **Basic Rate.** The right to be fully informed, prior to or at the time of admission and during the resident's stay, in writing, of the basic rate charged by the home, of services available in the home, and of any additional charges related to such services, including charges for services not covered under the Medicare or Medicaid program. The basic rate shall not be changed unless thirty days\* notice is given to the resident or, if the resident is unable to understand this information, to the resident's sponsor.
- (26) **Monthly Bill.** The right of the resident and person paying for the care to examine and receive a bill at least monthly for the resident's care from the home that itemizes charges not included in the basic rates;
- (27) **Financial Issues.**
- (a) The right to be free from financial exploitation;
  - (b) The right to manage the resident's own personal financial affairs, or, if the resident has delegated this responsibility in writing to the home, to receive upon written request at least a quarterly accounting statement of financial transactions made on the resident's behalf. The statement shall include:
    - (i) A complete record of all funds, personal property, or possessions of a resident from any source whatsoever, that have been deposited for safekeeping with the home for use by the resident or the resident's sponsor; and



- (ii) A listing of all deposits and withdrawals transacted, which shall be substantiated by receipts which shall be available for inspection and copying by the resident or sponsor.
- (28) **Access to Property on Deposit.** The right of the resident to be allowed unrestricted access to the resident's property on deposit at reasonable hours, unless requests for access to property on deposit are so persistent, continuous, and unreasonable that they constitute a nuisance;
- (29) **Room & Roommate Change.** The right to receive reasonable notice before the resident's room or roommate is changed, including an explanation of the reason for either change.
- (30) **Transfer & Discharge.** The right not to be transferred or discharged from the home unless the transfer is necessary because of one of the following:
  - (a) The welfare and needs of the resident cannot be met in the home.
  - (b) The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home.
  - (c) The safety of individuals in the home is endangered.
  - (d) The health of individuals in the home would otherwise be endangered.
  - (e) The resident has failed, after reasonable and appropriate notice, to pay or to have the Medicare or Medicaid program pay on the resident's behalf, for the care provided by the home. A resident shall not be considered to have failed to have the resident's care paid for if the resident has applied for Medicaid, unless both of the following are the case:
    - (i) The resident's application, or a substantially similar previous application, has been denied by the county department of job and family services.
    - (ii) If the resident appealed the denial pursuant to division (C) of section 5101.35 of the Revised Code, the director of job and family services has upheld the denial.

- (f) The home's license has been revoked, the home is being closed pursuant to section 3721.08, sections 5111.35 to 5111.62, or section 5155.31 of the Revised Code, or the home otherwise ceases to operate.
  - (g) The resident is a recipient of Medicaid, and the home's participation in the Medicaid program is involuntarily terminated or denied.
  - (h) The resident is a beneficiary under the Medicare program, and the home's participation in the Medicare program is involuntarily terminated or denied.
- (31) **Transfer & Discharge.** The right not to be transferred or discharged from the home to a location that is incapable of meeting the resident's health care and safety needs.
- (32) **Transfer & Discharge.** The right not to be transferred or discharged from the home without adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, including proper arrangements for medication, equipment, health care services, and other necessary services.
- (33) **Transfer & Discharge.** All rights provided under 42 C.F.R. 483.15 and 483.21 and any other transfer or discharge rights provided under federal law.
- (34) **Grievances.** The right to voice grievances and recommend changes in policies and services to the home's staff, to employees of the department of health, or to other persons not associated with the operation of the home, of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to a residents' rights advocate, and the right to be a member of, to be active in, and to associate with persons who are active in organizations of relatives and friends of nursing home residents and other organizations engaged in assisting residents.
- (35) **Reporting of Significant Health Status Changes.** The right to have any significant change in the resident's health status reported to the resident's sponsor. As soon as such a change is known to the home's staff, the home shall make a reasonable effort to notify the sponsor within twelve hours.
- (36) **Choice of Hospice.** The right, if the resident has requested the care

and services of a hospice care program, to choose a hospice care program licensed under Chapter 3712. of the Revised Code that best meets the resident's needs.

A sponsor may act on a resident's behalf to assure that the home does not deny the residents' rights under sections 3721.10 to 3721.17 of the Revised Code.

- (B) Any attempted waiver of the rights listed in division (A) of this section is void.

**Authorization to handle residents' financial affairs; accounts; return of funds. (§ 3721.15).**

- (A) Authorization from a resident or a sponsor with a power of attorney for a home to manage the resident's financial affairs shall be in writing and shall be attested to by a witness who is not connected in any manner whatsoever with the home or its administrator. The home shall maintain accounts pursuant to division (A)(27) of section 3721.13 of the Revised Code. Upon the resident's transfer, discharge, or death, the account shall be closed and a final accounting made. All remaining funds shall be returned to the resident or resident's sponsor, except in the case of death, when all remaining funds shall be transferred or used in accordance with section 5111.113 [5111.11.3] of the Revised Code.
- (B) A home that manages a resident's financial affairs shall deposit the resident's funds in excess of one hundred dollars, and may deposit the resident's funds that are one hundred dollars or less, in an interest-bearing account separate from any of the home's operating accounts. Interest earned on the resident's funds shall be credited to the resident's account. A resident's funds that are one hundred dollars or less and have not been deposited in an interest-bearing account may be deposited in a noninterest-bearing account or petty cash fund.
- (C) Each resident whose financial affairs are managed by a home shall be promptly notified by the home when the total of the amount of funds in the resident's accounts and the petty cash fund plus other nonexempt resources reaches two hundred dollars less than the maximum amount permitted a recipient of Medicaid. The notice shall include an explanation of the potential effect on the resident's eligibility for Medicaid if the amount in the resident's accounts and the petty cash fund, plus the value of other nonexempt resources, exceeds the maximum assets a Medicaid

recipient may retain.

- (D) Each home that manages the financial affairs of residents shall purchase a surety bond or otherwise provide assurance satisfactory to the director of health, or, in the case of a home that participates in the Medicaid program, to the director of job and family services, to assure the security of all residents' funds managed by the home.

### **Residents' rights concerning transfer or discharge. (§ 3721.16).**

For each resident of a home, notice of a proposed transfer or discharge shall be in accordance with this section.

- (A)(1) The administrator of a home shall notify a resident in writing, and the resident's sponsor in writing by certified mail, return receipt requested, in advance of any proposed transfer or discharge from the home. The administrator shall send a copy of the notice to the state department of health. The notice shall be provided at least thirty days in advance of the proposed transfer or discharge, unless any of the following applies:

- (a) The resident's health has improved sufficiently to allow a more immediate discharge or transfer to a less skilled level of care;
- (b) The resident has resided in the home less than thirty days;
- (c) An emergency arises in which the safety of individuals in the home is endangered;
- (d) An emergency arises in which the health of individuals in the home would otherwise be endangered;
- (e) An emergency arises in which the resident's urgent medical needs necessitate a more immediate transfer or discharge.

In any of the circumstances described in divisions (A)(1)(a) to (e) of this section, the notice shall be provided as many days in advance of the proposed transfer or discharge as is practicable.

- (2) The notice required under division (A)(1) of this section shall include all of the following:
  - (a) The reasons for the proposed transfer or discharge;
  - (b) The proposed date the resident is to be transferred or discharged;
  - (c) The proposed location to which the resident is to be transferred

or discharged;

- (d) Notice of the right of the resident and the resident's sponsor to an impartial hearing at the home on the proposed transfer or discharge, and of the manner in which and the time within which the resident or sponsor may request a hearing pursuant to section 3721.161 [3721.16.1] of the Revised Code;
  - (e) A statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date;
  - (f) The address of the legal services office of the department of health;
  - (g) The name, address, and telephone number of a representative of the state long-term care ombudsperson program and, if the resident or patient has a developmental disability or mental illness, the name, address, and telephone number of the Ohio legal rights service.
- (B) No home shall transfer or discharge a resident before the date specified in the notice required by division (A) of this section unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.
- (C) Transfer or discharge actions shall be documented in the resident's medical record by the home if there is a medical basis for the action.
- (D) A resident or resident's sponsor may challenge a transfer or discharge by requesting an impartial hearing pursuant to section 3721.161 [3721.16.1] of the Revised Code, unless the transfer or discharge is required because of one of the following reasons:
- (1) The home's license has been revoked under this chapter;
  - (2) The home is being closed pursuant to section 3721.08, sections 5111.35 to 5111.62, or section 5155.31 of the Revised Code;
  - (3) The resident is a recipient of Medicaid and the home's participation in the Medicaid program has been involuntarily terminated or denied by the federal government;
  - (4) The resident is a beneficiary under the Medicare program and

the home's certification under the Medicare program has been involuntarily terminated or denied by the federal government.

- (E) If a resident is transferred or discharged pursuant to this section, the home from which the resident is being transferred or discharged shall provide the resident with adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, and the home or alternative setting to which the resident is to be transferred or discharged shall have accepted the resident for transfer or discharge.
- (F) At the time of a transfer or discharge of a resident who is a recipient of Medicaid from a home to a hospital or for therapeutic leave, the home shall provide notice in writing to the resident and in writing by certified mail, return receipt requested, to the resident's sponsor, specifying the number of days, if any, during which the resident will be permitted under the Medicaid program to return and resume residence in the home and specifying the Medicaid program's coverage of the days during which the resident is absent from the home. An individual who is absent from a home for more than the number of days specified in the notice and continues to require the services provided by the facility shall be given priority for the first available bed in a semi-private room.

**Resident or sponsor may request hearing challenging proposed transfer or discharge. (§ 3721.161).**

- (A) Not later than thirty days after the date a resident or the resident's sponsor receives notice of a proposed transfer or discharge, whichever is later, the resident or resident's sponsor may challenge the proposed transfer or discharge by submitting a written request for a hearing to the state department of health. On receiving the request, the department shall conduct a hearing in accordance with section 3721.162 [3721.16.2] of the Revised Code to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code.
- (B) Except in the circumstances described in divisions (A)(1)(a) to (e) of section 3721.16 of the Revised Code, if a resident or resident's sponsor submits a written hearing request not later than ten days after the resident or the resident's sponsor received notice of the proposed transfer or

discharge, whichever is later, the home shall not transfer or discharge the resident unless the department determines after the hearing that the transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.

- (C) If a resident or resident's sponsor does not request a hearing pursuant to division (A) of this section, the home may transfer or discharge the resident on the date specified in the notice required by division (A) of section 3721.16 of the Revised Code or thereafter, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date.
- (D) If the resident or resident's sponsor requests a hearing in writing pursuant to division (A) of this section and the home transfers or discharges the resident before the department issues a hearing decision, the home shall readmit the resident in the first available bed if the department determines after the hearing that the transfer or discharge does not comply with division (A)(30) of section 3721.13 of the Revised Code or the department's determination to the contrary is reversed on appeal.

**Determination concerning transfer or discharge; appeals. (§ 3721.162).**

- (A) On receiving a request pursuant to section 3721.161 [3721.16.1] of the Revised Code, the department of health shall conduct hearings under this section in accordance with 42 C.F.R. 431, subpart E, to determine whether the proposed transfer or discharge complies with division (A) (30) of section 3721.13 of the Revised Code.
- (B) The department shall employ or contract with an attorney to serve as hearing officer. The hearing officer shall conduct a hearing in the home not later than ten days after the date the department receives a request pursuant to section 3721.161 [3721.16.1] of the Revised Code, unless the resident and the home or, if the resident is not competent to make a decision, the resident's sponsor and the home, agree otherwise. The hearing shall be recorded on audiotape, but neither the recording nor a transcript of the recording shall be part of the official record of the hearing. A hearing conducted under this section is not subject to section 121.22 of the Revised Code.
- (C) Unless the parties otherwise agree, the hearing officer shall issue a decision

within five days of the date the hearing concludes. In all cases, a decision shall be issued not later than thirty days after the department receives a request pursuant to section 3721.161 [3721.16.1] of the Revised Code. The hearing officer's decision shall be served on the resident or resident's sponsor and the home by certified mail. The hearing officer's decision shall be considered the final decision of the department.

- (D) A resident, resident's sponsor, or home may appeal the decision of the department to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code, except for all of the following:
- (1) The resident, resident's sponsor, or home shall file the appeal in the court of common pleas of the county in which the home is located.
  - (2) The resident or resident's sponsor may apply to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor shall not be required to furnish the costs of the appeal.
  - (3) The appeal shall be filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party shall serve the opposing party a copy of the notice of appeal by hand-delivery or certified mail, return receipt requested. If the home is the appealing party, it shall provide a copy of the notice of appeal to both the resident and the resident's sponsor or attorney, if known.
  - (4) The department shall not file a transcript of the hearing with the court unless the court orders it to do so. The court shall issue such an order only if it finds that the parties are unable to stipulate to the facts of the case and that the transcript is essential to the determination of the appeal. If the court orders the department to file the transcript, the department shall do so not later than thirty days after the day the court issues the order.
- (E) The court shall not require an appellant to pay a bond as a condition of issuing a stay pending its decision.



- (F) The resident, resident's sponsor, home, or department may commence a civil action in the court of common pleas of the county in which the home is located to enforce the decision of the department or the court. If the court finds that the resident or home has not complied with the decision, it shall enjoin the violation and order other appropriate relief, including attorney's fees.

**Resident may file grievance; procedure upon complaint to department of health; retaliation prohibited; cause of action for violation. (§ 3721.17).**

- (A) Any resident who believes that the resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may file a grievance under procedures adopted pursuant to division (A)(2) of section 3721.12 of the Revised Code.

When the grievance committee determines a violation of sections 3721.10 to 3721.17 of the Revised Code has occurred, it shall notify the administrator of the home. If the violation cannot be corrected within ten days, or if ten days have elapsed without correction of the violation, the grievance committee shall refer the matter to the department of health.

- (B) Any person who believes that a resident's rights under sections 3721.10 to 3721.17 of the Revised Code have been violated may report or cause reports to be made of the information directly to the department of health. No person who files a report is liable for civil damages resulting from the report.
- (C) (1) Within thirty days of receiving a complaint under this section, the department of health shall investigate any complaint referred to it by a home's grievance committee and any complaint from any source that alleges that the home provided substantially less than adequate care or treatment, or substantially unsafe conditions, or, within seven days of receiving a complaint, refer it to the attorney general, if the attorney general agrees to investigate within thirty days.
- (2) Within thirty days of receiving a complaint under this section, the department of health may investigate any alleged violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, not covered by division (C)(1) of this section, or it may, within seven days of receiving a complaint, refer the complaint to the grievance committee at the home

where the alleged violation occurred, or to the attorney general if the attorney general agrees to investigate within thirty days.

- (D) If, after an investigation, the department of health finds probable cause to believe that a violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant to those sections, has occurred at a home that is certified under the Medicare or Medicaid program, it shall cite one or more findings or deficiencies under sections 5111.35 to 5111.62 of the Revised Code. If the home is not so certified, the department shall hold an adjudicative hearing within thirty days under Chapter 119. of the Revised Code.
- (E) Upon a finding at an adjudicative hearing under division (D) of this section that a violation of sections 3721.10 to 3721.17 of the Revised Code, or of rules, policies, or procedures adopted pursuant thereto, has occurred, the department of health shall make an order for compliance, set a reasonable time for compliance, and assess a fine pursuant to division (F) of this section. The fine shall be paid to the general revenue fund only if compliance with the order is not shown to have been made within the reasonable time set in the order. The department of health may issue an order prohibiting the continuation of any violation of sections 3721.10 to 3721.17 of the Revised Code.

Findings at the hearings conducted under this section may be appealed pursuant to Chapter 119. of the Revised Code, except that an appeal may be made to the court of common pleas of the county in which the home is located.

The department of health shall initiate proceedings in court to collect any fine assessed under this section that is unpaid thirty days after the violator's final appeal is exhausted.

- (F) Any home found, pursuant to an adjudication hearing under division (D) of this section, to have violated sections 3721.10 to 3721.17 of the Revised Code, or rules, policies, or procedures adopted pursuant to those sections may be fined not less than one hundred nor more than five hundred dollars for a first offense. For each subsequent offense, the home may be fined not less than two hundred nor more than one thousand dollars.

A violation of sections 3721.10 to 3721.17 of the Revised Code is a separate offense for each day of the violation and for each resident who

claims the violation.

- (G) No home or employee of a home shall retaliate against any person who:
- (1) Exercises any right set forth in sections 3721.10 to 3721.17 of the Revised Code, including, but not limited to, filing a complaint with the home's grievance committee or reporting an alleged violation to the department of health;
  - (2) Appears as a witness in any hearing conducted under this section or section 3721.162 [3721.16.2] of the Revised Code;
  - (3) Files a civil action alleging a violation of sections 3721.10 to 3721.17 of the Revised Code, or notifies a county prosecuting attorney or the attorney general of a possible violation of sections 3721.10 to 3721.17 of the Revised Code.

If, under the procedures outlined in this section, a home or its employee is found to have retaliated, the violator may be fined up to one thousand dollars.

- (H) When legal action is indicated, any evidence of criminal activity found in an investigation under division (C) of this section shall be given to the prosecuting attorney in the county in which the home is located for investigation.
- (I) (1) (a) Any resident whose rights under sections 3721.10 to 3721.17 of the Revised Code are violated has a cause of action against any person or home committing the violation.
- (b) An action under division (I)(1)(a) of this section may be commenced by the resident or by the resident's legal guardian or other legally authorized representative on behalf of the resident or the resident's estate. If the resident or the resident's legal guardian or other legally authorized representative is unable to commence an action under that division on behalf of the resident, the following persons in the following order of priority have the right to and may commence an action under that division on behalf of the resident or the resident's estate:

- (i) The resident's spouse;
  - (ii) The resident's parent or adult child;
  - (iii) The resident's guardian if the resident is a minor child;
  - (iv) The resident's brother or sister;
  - (v) The resident's niece, nephew, aunt, or uncle.
- (c) Notwithstanding any law as to priority of persons entitled to commence an action, if more than one eligible person within the same level of priority seeks to commence an action on behalf of a resident or the resident's estate, the court shall determine, in the best interest of the resident or the resident's estate, the individual to commence the action. A court's determination under this division as to the person to commence an action on behalf of a resident or the resident's estate shall bar another person from commencing the action on behalf of the resident or the resident's estate.
- (d) The result of an action commenced pursuant to division (I)(1)(a) of this section by a person authorized under division (I)(1)(b) of this section shall bind the resident or the resident's estate that is the subject of the action.
- (e) A cause of action under division (I)(1)(a) of this section shall accrue, and the statute of limitations applicable to that cause of action shall begin to run, based upon the violation of a resident's rights under sections 3721.10 to 3721.17 of the Revised Code, regardless of the party commencing the action on behalf of the resident or the resident's estate as authorized under divisions (I)(1)(b) and (c) of this section.
- (2) (a) The plaintiff in an action filed under division (I)(1) of this section may obtain injunctive relief against the violation of the resident's rights. The plaintiff also may recover compensatory damages based upon a showing, by a preponderance of the evidence, that the violation of the resident's rights resulted from a negligent act or omission of the person or home and that the violation was the proximate cause

- of the resident's injury, death, or loss to person or property.
- (b) If compensatory damages are awarded for a violation of the resident's rights, section 2315.21 of the Revised Code shall apply to an award of punitive or exemplary damages for the violation.
  - (c) The court, in a case in which only injunctive relief is granted, may award to the prevailing party reasonable attorney's fees limited to the work reasonably performed.
- (3) Division (I)(2)(b) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action in which this section is relevant, whether the action is pending in court or commenced on or after July 9, 1998.
  - (4) Within thirty days after the filing of a complaint in an action for damages brought against a home under division (I)(1)(a) of this section by or on behalf of a resident or former resident of the home, the plaintiff or plaintiff's counsel shall send written notice of the filing of the complaint to the department of job and family services if the department has a right of recovery under section 5101.58 of the Revised Code against the liability of the home for the cost of medical services and care arising out of injury, disease, or disability of the resident or former resident.

**Duties of home administrator concerning residents' rights; grievance procedure. (§ 3721.12).**

(A) The administrator of a home shall:

- (1) With the advice of residents, their sponsors, or both, establish and review at least annually, written policies regarding the applicability and implementation of residents' rights under sections 3721.10 to 3721.17 of the Revised Code, the responsibilities of residents regarding the rights, and the home's grievance procedure established under division (A)(2) of this section. The administrator is responsible for the development of, and adherence to, procedures implementing the policies.
- (2) Establish a grievance committee for review of complaints by residents. The grievance committee shall be comprised of the home's staff and residents, sponsors, or outside representatives in a ratio of not more

than one staff member to every two residents, sponsors, or outside representatives.

- (3) Furnish to each resident and sponsor prior to or at the time of admission, and to each member of the home's staff, at least one of each of the following:
  - (a) A copy of the rights established under sections 3721.10 to 3721.17 of the Revised Code;
  - (b) A written explanation of the provisions of sections 3721.16 to 3721.162 [3721.16.2] of the Revised Code;
  - (c) A copy of the home's policies and procedures established under this section;
  - (d) A copy of the home's rules;
  - (e) A copy of the addresses and telephone numbers of the board of health of the health district of the county in which the home is located, the county department of job and family services of the county in which the home is located, the state departments of health and job and family services, the state and local offices of the department of aging, and any Ohio nursing home ombudsperson program.
- (B) Written acknowledgment of the receipt of copies of the materials listed in this section shall be made part of the resident's record and the staff member's personnel record.
- (C) The administrator shall post all of the following prominently within the home:
  - (1) A copy of the rights of residents as listed in division (A) of section 3721.13 of the Revised Code;
  - (2) A copy of the home's rules and its policies and procedures regarding the rights and responsibilities of residents;
  - (3) A notice that a copy of this chapter, rules of the department of health applicable to the home, and federal regulations adopted under the Medicare and Medicaid programs, and the materials required to be available in the home under section 3721.021 [3721.02.1] of the Revised Code, are available for inspection in the home at reasonable

- hours;
- (4) A list of residents' rights advocates;
  - (5) A notice that the following are available in a place readily accessible to residents:
    - (a) If the home is licensed under section 3721.02 of the Revised Code, a copy of the most recent licensure inspection report prepared for the home under that section;
    - (b) If the home is a facility, a copy of the most recent statement of deficiencies issued to the home under section 5111.42 of the Revised Code.
- (D) The administrator of a home may, with the advice of residents, their sponsors, or both, establish written policies regarding the applicability and administration of any additional residents' rights beyond those set forth in sections 3721.10 to 3721.17 of the Revised Code, and the responsibilities of residents regarding the rights. Policies established under this division shall be reviewed, and procedures developed and adhered to as in division (A)(1) of this section.

**Duties of home to implement rights; certain persons to have access to home. (§ 3721.14).**

To assist in the implementation of the rights granted in division (A) of section 3721.13 of the Revised Code, each home shall provide:

- (A) Appropriate staff training to implement each resident's rights under division (A) of section 3721.13 of the Revised Code, including, but not limited to, explaining:
  - (1) The resident's rights and the staff's responsibility in the implementation of the rights;
  - (2) The staff's obligation to provide all residents who have similar needs with comparable service.
- (B) Arrangements for a resident's needed ancillary services;
- (C) Protected areas outside the home for residents to enjoy outdoor activity, within the capacity of the facility, consistent with applicable laws and rules;

- (D) Adequate indoor space, which need not be dedicated to that purpose, for families of residents to meet privately with families of other residents;
- (E) Access to the following persons to enter the home during reasonable hours, except where such access would interfere with resident care or the privacy of residents:
  - (1) Employees of the department of health, department of mental health, department of mental retardation and developmental disabilities, department of aging, department of job and family services, and county departments of job and family services;
  - (2) Prospective residents and their sponsors;
  - (3) A resident's sponsors;
  - (4) Residents' rights advocates;
  - (5) A resident's attorney;
  - (6) A minister, priest, rabbi, or other person ministering to a resident's religious needs.
- (F) In writing, a description of the home's grievance procedures.

**Definitions (§ 3721.10).**

- (A) "Center" means all of the following:
  - (1) A home as defined in section 3721.01 of the Revised Code;
  - (2) Any facility or part of a facility not defined as a home under section 3721.01 of the Revised Code that is certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395 and 1396, as amended, or as a nursing facility as defined in section 5111.20 of the Revised Code;
  - (3) A county home or district home operated pursuant to Chapter 5155. of the Revised Code.
- (B) "Resident" means a resident or a patient of a home.
- (C) "Administrator" means all of the following:



- (1) With respect to a home as defined in section 3721.01 of the Revised Code, a nursing home administrator as defined in section 4751.01 of the Revised Code;
  - (2) With respect to a facility or part of a facility not defined as a home in section 3721.01 of the Revised Code that is authorized to provide skilled nursing facility or nursing facility services, the administrator of the facility or part of a facility;
  - (3) With respect to a county home or district home, the superintendent appointed under Chapter 5155. of the Revised Code.
- (D) “Sponsor” means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident’s welfare.
- (E) “Residents’ rights advocate” means:
- (1) An employee or representative of any state or local government entity that has a responsibility regarding residents and that has registered with the department of health under division (B) of section 3701.07 of the Revised Code;
  - (2) An employee or representative of any private nonprofit corporation or association that qualifies for tax-exempt status under section 501(a) of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and that has registered with the department of health under division (B) of section 3701.07 of the Revised Code and whose purposes include educating and counseling residents, assisting residents in resolving problems and complaints concerning their care and treatment, and assisting them in securing adequate services to meet their needs;
  - (3) A member of the general assembly.
- (F) “Physical restraint” means, but is not limited to, any article, device, or garment that interferes with the free movement of the resident and that the resident is unable to remove easily, a geriatric chair, or a locked room door.
- (G) “Chemical restraint” means any medication bearing the American hospital formulary service therapeutic class 4.00, 28:16:08, 28:24:08, or 28:24:92

that alters the functioning of the central nervous system in a manner that limits physical and cognitive functioning to the degree that the resident cannot attain the resident's highest practicable physical, mental, and psychosocial well-being.

- (H) "Ancillary service" means, but is not limited to, podiatry, dental, hearing, vision, physical therapy, occupational therapy, speech therapy, and psychological and social services.
- (I) "Facility" means a facility, or part of a facility, certified as a nursing facility or skilled nursing facility under Title XVIII or Title XIX of the "Social Security Act." "Facility" does not include an intermediate care facility for the mentally retarded, as defined in section 5111.20 of the Revised Code.
- (J) "Medicare" means the program established by Title XVIII of the "Social Security Act."
- (K) "Medicaid" means the program established by Title XIX of the "Social Security Act" and Chapter 5111. of the Revised Code.

**Director to adopt rules. (§ 3721.11).**

- (A) The director of the department of health shall adopt rules under Chapter 119. of the Revised Code to govern procedures for the implementation of sections 3721.10 to 3721.17 of the Revised Code.
- (B) The director may adopt, amend, and repeal substantive rules under Chapter 119. of the Revised Code defining with reasonable specificity acts that violate division (A) of section 3721.13 of the Revised Code.

**Criminal records check for prospective employees providing direct care to older adult. (§ 3721.121).**

- (A) As used in this section:
  - (1) "Adult day-care program" means a program operated pursuant to rules adopted by the public health council under section 3721.04 of the Revised Code and provided by and on the same site as homes licensed under this chapter.
  - (2) "Applicant" means a person who is under final consideration for

- employment with a home or adult day-care program in a full-time, part-time, or temporary position that involves providing direct care to an older adult. “Applicant” does not include a person who provides direct care as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.
- (3) “Criminal records check” and “older adult” have the same meanings as in section 109.572 [109.57.2] of the Revised Code.
  - (4) “Center” means a home as defined in section 3721.10 of the Revised Code.
- (B) (1) Except as provided in division (I) of this section, the chief administrator of a home or adult day-care program shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check with respect to each applicant. If an applicant for whom a criminal records check request is required under this division does not present proof of having been a resident of this state for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation in a criminal records check, the chief administrator shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the applicant. Even if an applicant for whom a criminal records check request is required under this division presents proof of having been a resident of this state for the five-year period, the chief administrator may request that the superintendent include information from the federal bureau of investigation in the criminal records check.
- (2) A person required by division (B)(1) of this section to request a criminal records check shall do both of the following:
    - (a) Provide to each applicant for whom a criminal records check request is required under that division a copy of the form prescribed pursuant to division (C)(1) of section 109.572 [109.57.2] of the Revised Code and a standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section, and obtain the completed form and impression sheet from the applicant;

- (b) Forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation.
  - (3) An applicant provided the form and fingerprint impression sheet under division (B)(2)(a) of this section who fails to complete the form or provide fingerprint impressions shall not be employed in any position for which a criminal records check is required by this section.
- (C) (1) Except as provided in rules adopted by the director of health in accordance with division (F) of this section and subject to division (C)(2) of this section, no home or adult day-care program shall employ a person in a position that involves providing direct care to an older adult if the person has been convicted of or pleaded guilty to any of the following:
- (a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323 [2907.32.1, 2907.32.2, 2907.32.3], 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161 [2923.16.1], 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code.
  - (b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (C)(1)(a) of this section.
- (2) (a) A home or an adult day-care program may employ conditionally an applicant for whom a criminal records check request is required under division (B) of this section prior to obtaining the results of a criminal records check regarding the individual, provided that the home or program shall request a criminal records check regarding the individual in accordance with division (B)(1) of this section not later than five business days after the individual begins conditional employment. In the circumstances described in division (I)(2) of this section, a home or adult day-care program may employ conditionally an applicant who has been referred to the home or adult day-care

program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and for whom, pursuant to that division, a criminal records check is not required under division (B) of this section.

(b) A home or adult day-care program that employs an individual conditionally under authority of division (C)(2)(a) of this section shall terminate the individual's employment if the results of the criminal records check requested under division (B) of this section or described in division (I)(2) of this section, other than the results of any request for information from the federal bureau of investigation, are not obtained within the period ending thirty days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the offenses listed or described in division (C)(1) of this section, the home or program shall terminate the individual's employment unless the home or program chooses to employ the individual pursuant to division (F) of this section. Termination of employment under this division shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the individual makes any attempt to deceive the home or program about the individual's criminal record.

(D) (1) Each home or adult day-care program shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 [109.57.2] of the Revised Code for each criminal records check conducted pursuant to a request made under division (B) of this section.

(2) A home or adult day-care program may charge an applicant a fee not exceeding the amount the home or program pays under division (D) (1) of this section. A home or program may collect a fee only if both of the following apply:

(a) The home or program notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment;

- (b) The medical assistance program established under Chapter 5111. of the Revised Code does not reimburse the home or program the fee it pays under division (D)(1) of this section.
- (E) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:
  - (1) The individual who is the subject of the criminal records check or the individual's representative;
  - (2) The chief administrator of the home or program requesting the criminal records check or the administrator's representative;
  - (3) The administrator of any other facility, agency, or program that provides direct care to older adults that is owned or operated by the same entity that owns or operates the home or program;
  - (4) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant;
  - (5) Any person to whom the report is provided pursuant to, and in accordance with, division (I)(1) or (2) of this section;
  - (6) The board of nursing for purposes of accepting and processing an application for a medication aide certificate issued under Chapter 4723. of the Revised Code.
- (F) In accordance with section 3721.11 of the Revised Code, the director of health shall adopt rules to implement this section. The rules shall specify circumstances under which a home or adult day-care program may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section but meets personal character standards set by the director.
- (G) The chief administrator of a home or adult day-care program shall inform each individual, at the time of initial application for a position that involves providing direct care to an older adult, that the individual

is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the individual comes under final consideration for employment.

- (H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an individual who a home or adult day-care program employs in a position that involves providing direct care to older adults, all of the following shall apply:
- (1) If the home or program employed the individual in good faith and reasonable reliance on the report of a criminal records check requested under this section, the home or program shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate;
  - (2) If the home or program employed the individual in good faith on a conditional basis pursuant to division (C)(2) of this section, the home or program shall not be found negligent solely because it employed the individual prior to receiving the report of a criminal records check requested under this section;
  - (3) If the home or program in good faith employed the individual according to the personal character standards established in rules adopted under division (F) of this section, the home or program shall not be found negligent solely because the individual prior to being employed had been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section.
- (I) (1) The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and both of the following apply:
- (a) The chief administrator receives from the employment service or the applicant a report of the results of a criminal records check regarding the applicant that has been conducted by the superintendent within the one-year period immediately preceding the applicant's referral;

- (b) The report of the criminal records check demonstrates that the person has not been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of this section, or the report demonstrates that the person has been convicted of or pleaded guilty to one or more of those offenses, but the home or adult day-care program chooses to employ the individual pursuant to division (F) of this section.
- (2) The chief administrator of a home or adult day-care program is not required to request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of an applicant and may employ the applicant conditionally as described in this division, if the applicant has been referred to the home or program by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care of older adults and if the chief administrator receives from the employment service or the applicant a letter from the employment service that is on the letterhead of the employment service, dated, and signed by a supervisor or another designated official of the employment service and that states that the employment service has requested the superintendent to conduct a criminal records check regarding the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of or pleaded guilty to any offense listed or described in division (C)(1) of this section, that, as of the date set forth on the letter, the employment service had not received the results of the criminal records check, and that, when the employment service receives the results of the criminal records check, it promptly will send a copy of the results to the home or adult day-care program. If a home or adult day-care program employs an applicant conditionally in accordance with this division, the employment service, upon its receipt of the results of the criminal records check, promptly shall send a copy of the results to the home or adult day-care program, and division (C)(2)(b) of this section applies regarding the conditional employment.





## RESIDENT'S ACKNOWLEDGEMENT OF RECEIPT

I acknowledge that I have received a copy of Ohio Revised Code sections 3721.10 to 3721.17, and a copy of pertinent provisions of the Code of Federal Regulations, Title 42. I acknowledge that I also have received a copy of this facility's rules, policies and procedures regarding the implementation of residents' rights and governing resident conduct and responsibilities and a copy of the addresses and telephone numbers of the state and local health and human services departments, the state aging department, and the long-term care ombudsman program. Finally, I acknowledge that the nursing facility residents' rights under both Ohio and federal law have been explained to me in a language that I understand.

In compliance with federal and state regulations, we must have a signed record stating that you have received the specified information.

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*NAME OF RESIDENT (please print):*

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*Resident's Signature:*

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*Resident Representative / Sponsor:*

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*Date:*

*Provided as a service of the Ohio Health Care Association*

## **STAFF MEMBER'S ACKNOWLEDGEMENT OF RECEIPT**

I acknowledge that I have received a copy of Ohio Revised Code sections 3721.10 to 3721.17, and a copy of pertinent provisions of the Code of Federal Regulations, Title 42. I acknowledge that I also have received a copy of this facility's rules, policies and procedures regarding the implementation of residents' rights and governing resident conduct and responsibilities and a copy of the addresses and telephone numbers of the state and local health and human services departments, the state aging department, and the long-term care ombudsman program.

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*Staff Member Signature:*

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*Date:*

*Provided as a service of the Ohio Health Care Association*

# **OHCA**

**OHIO HEALTH CARE ASSOCIATION**

**Representing Quality Long Term Services and Supports**

*(effective October 3, 2023)*

