

# Indiana Legal Services, Inc

Using the law to fight poverty, empower clients, and improve access to justice.

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## Nursing Home Resident Rights

When you move into a nursing home, you do not lose any of your rights. You are still protected by the Constitution and the Bill of Rights. You continue to have the right to:

- Speak freely.
- Enter into contracts.
- Manage your own personal and financial affairs.
- Associate with and visit whomever you choose.
- Communicate with persons outside the home.
- Be free from physical, mental and sexual abuse.
- Make your own decisions about medical treatment.

If you have a guardian, the guardian exercises your rights. If you have an attorney in fact (representative) under a power of attorney or a health care representative, your representative can exercise your rights as allowed by your documents.

In addition, when you move into a nursing home you have special rights. These include:

### **1. THE RIGHT TO INFORMATION**

Homes must tell you about your rights at admission and upon request. Homes must provide:

- A copy of the latest survey results and any plan of correction in a public area.
- Advance notice of changes in your room or roommate.
- A written copy of your rights, the right to file a complaint and how to contact the ombudsman and the state survey agency.
- Written information about services covered under the basic rate and extra charges.
- Written and oral information concerning Medicaid.
- Notification of nurse staffing waivers.

### **2. SELF DETERMINATION**

Nursing facilities must respond to your needs and concerns, as expressed by you or your legal representative. You have the right to:

- Choose your personal physician.
- Receive full information, in advance, and participate in your care plan and treatment.
- Receive reasonable accommodation for your individual needs and preferences.

- Voice complaints without reprisal and receive a prompt response.
- Organize and participate in resident groups.

### **3. PERSONAL AND PRIVACY RIGHTS**

You have the right to:

- Participate in social, religious, and community activities as you choose.
- Have privacy during medical treatment, personal visits, written and telephone communications.
- Have all of your records kept confidential.

### **4. TRANSFER AND DISCHARGE RIGHTS**

You may only be transferred for one of the following reasons:

- The transfer is necessary to meet your welfare and your needs cannot be met in the facility.
- Your health has improved so that nursing care is no longer needed.
- The health or safety of others is endangered.
- You have failed, after reasonable notice, to pay for your care.
- The facility closes.

Notice of Involuntary Relocation must be given on the form required by the State Health Department. You and your representatives have the following rights:

- At least thirty days advance notice, or as soon as possible if immediate transfer is needed because of your immediate health needs.
- Notice must include the reason for the transfer, the location to which you will be transferred, information concerning your right to appeal the transfer, and the name, address and phone number of the local and state ombudsman program.
- Information concerning bed-hold and your right to return to the next available semi-private bed if coverage ends, you need the services provided and your care is paid for by Medicaid.
- Preparation and orientation by facility staff to ensure safe and orderly transfer from the facility.

### **5. VISITATION RIGHTS**

You have the right to receive visitors and to refuse visitors. The federal Reform Law provides for:

- Immediate access by personal physician and representatives from state and federal agencies, including the ombudsman program.
- Immediate access by relatives, if you consent.
- Immediate access by others with "reasonable" restrictions.
- Reasonable visits by groups, subject to your consent.
- Access by ombudsman to records with your consent.

### **6. PROHIBITION AGAINST MEDICAID DISCRIMINATION**

Discrimination in treatment of residents is prohibited and applicants for admission are protected from fraudulent activities. Facilities must:

- Have identical policies regardless of source of payment.
- Provide information on how to apply for Medicaid.
- Not request, require or encourage residents to waive rights concerning Medicaid.
- If your facility is a Medicaid provider, not transfer or discharge solely because

payment source has changed from private pay to Medicaid.

- Not require a guarantor of payment.
- Not charge, solicit, accept or receive gifts, money, donations or other "considerations" as a precondition for admission or continued stay for persons eligible for Medicaid.

## 7. PROTECTION OF PERSONAL FUNDS

You have the right to manage your own money. If you request the facility to manage your funds, the facility must:

- Keep funds over \$50.00 in an interest bearing account.
- Keep your funds and facility funds separate.
- Keep and give you complete and accurate accountings, at least quarterly, and upon request.
- Not charge for services or items covered by Medicaid.
- Upon your death, turn funds over to the administrator of your estate.
- Purchase a surety bond or provide other assurance of security.

## 8. RIGHTS AGAINST RESTRAINT AND ABUSE

You are protected from physical, mental and sexual abuse and the inappropriate use of physical and chemical restraints, **including freedom from:**

- Physical or mental abuse, corporal punishment, or involuntary seclusion.
- Restraints used for discipline or convenience of staff.
- Restraints used without a physician's written orders to treat medical symptoms.
- Drugs used to control mood, mental status, or behavior without a written physician's order in the plan of care for a specific medical symptom. An independent, external expert must annually review the appropriateness of the prescriptions.

The Resident Rights section of the federal Reform Law states that you have "the right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraint imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms."

A physical restraint is defined as "any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily, which restricts freedom of movement or normal access to one's body. A chemical restraint is a drug used for convenience or discipline and not required to treat medical symptoms.

Restraints may be imposed only to ensure the physical safety of the resident or other residents, **and** upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used.

The nursing home must try to minimize the use of restraints. The nursing home should try less restrictive alternatives before resorting to the use of restraints. Where appropriate, occupational and physical therapy should be consulted first. A restraint should function as an "enabler" which better your quality of life. You and your family should receive a full explanation before a restraint is used.

The facility must monitor whether the restraint causes you any adverse mental, physical or psychosocial effects. If it does, the facility must attempt to eliminate those effects, either by

removing the restraint, or by finding a more acceptable means to treat your condition

You are to be free from any unnecessary drugs. Antipsychotic drugs cannot be given to you except to treat a specific condition. The facility must also try, if possible to discontinue antipsychotic drugs through gradual dose reduction and behavioral treatment.

Ask your doctor if you have questions concerning restraints. You can also call your local ombudsman.

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