

Requirements of Participation – Resident Rights Checklist

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New York

Requirements of Participation – Resident Rights Checklist February 2017

Sec 483.10: Resident Rights.

The following are the requirements which need to be in your facility's policies and procedures for this section of the Conditions of Participation and included in staff training as applicable to ensure that each resident is afforded a dignified existence, is treated with respect and dignity, and receives care in a manner and in an environment that promotes maintenance or enhancement of his/her quality of life.

- Exercise of Rights:
 - The facility must ensure that the resident can exercise his/her rights as a resident of the facility and as a citizen of the United States without interference, coercion, discrimination or reprisal from the facility.
 - The facility must support the resident in the exercise of his/her rights.
 - The facility must treat the same sex spouse of a resident the same as an opposite sex spouse.
 - If the facility is concerned that a resident representative is making decisions/taking actions that are not in the best interest of the resident, the facility must report such concerns as provided by state law.

- Planning and Implementing Care – The facility must:
 - Make provision for the resident to be informed, in a language he/she can understand, of his/her total health status.
 - Permit the resident/resident representative to participate in the development, revision and implementation of a person-centered plan of care. This includes the right to identify individuals or roles to be included in the planning process, the right to participate in establishing the expected goals and outcomes of care, the right to sign the plan of care, and the right to be informed (in advance) of changes to the plan of care.
 - Inform the resident/resident representative of the right to participate in his/her treatment and provide support to the resident/resident representative in doing so. This should include information concerning the care to be furnished and the type of caregiver/professional to render services.
 - Ensure that the physician/practitioner or other professional has informed the resident in advance of the risks/benefits of proposed care, treatment and treatment alternatives/options and the right to choose same.
 - The facility should include in the plan of care an assessment of the resident's strengths and needs and incorporate the resident's personal and cultural preferences.



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- Recognize the resident's right to request/refuse/discontinue treatment, to participate/refuse participation in experimental research, and to formulate an advanced directive.
- Provide the resident with the right to self-administer medication where clinically appropriate
- Choice of Attending Physician:
 - The facility may seek an alternate physician if the one selected by the resident refuses to serve or does not meet regulatory requirements, and the facility must inform the resident that it is doing so. If the resident chooses another physician that meets regulatory requirements, the facility must honor that choice.
 - Policies and procedures must address the means by which the facility ensures that each resident is informed of the identity and contact information of those physicians and other primary care professionals responsible for his/her care.
- Respect and Dignity:
 - The facility may not use physical/chemical restraints for purposes of discipline or convenience.
 - The facility must afford residents the right to retain and use personal possessions that don't infringe on the rights or health and safety of other residents.
 - The facility must provide the resident with reasonable accommodation of his/her needs and preferences in terms of services provided unless those preferences endanger the health/safety of the resident or other residents.
 - Roommates:
 - The resident may share a room with a resident spouse or anyone else (when practicable) when both parties consent.
 - The resident must provide written notice of any change of roommate, including the reason for the change.
 - Transfers:
 - The resident may refuse a transfer if the purpose of the transfer is to relocate the resident from one distinct part to another or solely for the convenience of staff.
- Self-Determination:
 - The facility must promote and facilitate resident self-determination through support of resident choice in various aspects of life in the facility and in the community.
 - Visitors:
 - Policies and procedures must address visitation and must specify any clinically necessary or reasonable restriction/limitation or safety restriction/limitation.

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- The facility must:
 - Inform the resident of visitation rights/restrictions/limitations, including the reason for any restrictions/limitations and to whom they apply.
 - Inform the resident of the right to receive visitors with the resident's consent, including spouse (same or opposite sex), domestic partner (same or opposite sex), family member or friend.
 - Not restrict, limit or deny visitation on a discriminatory basis and ensure that all visitors enjoy full and equal visitation privileges consistent with resident preferences.
 - Provide immediate access to representatives of Federal and state agencies, protection and advocacy systems, the LTC ombudsman, the resident's physician, the resident's representative, immediate family/other relatives, and other visitors with the consent of the resident (subject to reasonable clinical and safety restrictions).
- Resident/Family Groups:
 - The facility must provide resident/family groups with private space and notify them of upcoming meetings in a timely manner.
 - The facility must provide a designated staff person (approved by the resident/family group) who is responsible for providing assistance and responding to requests from the group.
 - The facility must act promptly upon the grievances and recommendations of the group concerning resident care and facility life, and provide the rationale for such action.
- Work - The resident may perform work in the facility if he/she desires to do so and the nature of the work as well as whether it is paid or voluntary is documented in the plan of care. Any paid work shall be compensated at no less than prevailing wages.
- Financial Affairs – In connection with the resident's right to manage his/her financial affairs, the facility must:
 - Inform the resident in advance of what charges may be imposed against his/her personal funds.
 - Not require the resident to deposit personal funds with the facility but if he/she does so, the facility must act as a fiduciary with respect to those funds.
 - Funds > \$100 (\$50 for Medicaid recipients) must be placed in an interest bearing account separate from the facility's operating accounts. Funds below this limit may be placed in an interest bearing or non-interest bearing account or petty cash fund.

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- The facility must establish/maintain an accounting system for residents' funds with special notice requirements for Medicaid recipients.
 - Purchase a surety bond/provide assurance of financial security.
 - Make conveyance of personal funds within 30 days following the death or discharge of a resident.
 - Observe limitations on charges against personal funds for any item or service paid by Medicare or Medicaid, including nursing services, food and nutrition services, activities program, routine personal hygiene items and bathing assistance, medically-related social services and hospice services elected by the resident.
 - If a resident request a non-covered item/service, the facility must inform the resident about applicable charges both orally and in writing.
- Information and Communication:
 - Resident access to records:
 - The facility must provide records in the form and format requested by the resident, if readily producible, or if not in hard copy, in another agreed upon form.
 - The facility may impose only a reasonable cost-based fee in relation to the record request, consistent with recent guidance from the Office of Civil Rights regarding access to health information.
 - The facility must ensure that information is provided in a form and manner the resident can access and understand, including in an alternative format or in a language the resident can understand – with the exception of personal and medical records (facilities can charge residents for translated summaries of these records) and survey results and related materials – see 483.10(g)(11).
 - The resident has a right to receive various required notices from the facility both orally (meaning spoken) and in writing (including Braille) in a format and language he or she understands.
 - Postings
 - Facilities are still required to post contact information for all pertinent state client advocacy groups and these notices must include email addresses.
 - Facilities must post a written statement that a resident may file complaints with the state survey agency. This is in addition to including the same information in a written notice of rights provided to the resident.

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- Facility postings must provide information in a form and manner accessible and understandable to residents and resident representatives.
- The facility must post the results of the most recent survey in a readily accessible place, without the requirement for a request by a resident, or family, to examine them.
- The facility must post a notice, in areas that are prominent and accessible to the public, about the availability of the last three years of “reports with respect to any surveys, certifications, and complaint investigations” available for review upon request.
- Communications:
 - The resident has a right to reasonable access to use of a phone, including TTY and TDD services, as well as use of a cell phone at the resident’s own expense.
 - The facility must protect and facilitate a resident’s right to communicate with individuals and entities within and external to the facility, including reasonable access to the internet, to the extent available to the facility.
 - The resident has the right to have reasonable access to and privacy in his/her use of electronic communications such as email and video communications and for internet research – provided the access is available to the facility, at the resident’s expense if the facility incurs costs, and the use complies with state and federal law (e.g., does not involve access to illegal on-line content, etc.).
- Notification of Changes:
 - The facility must notify the resident and family/legal representative (if known), and consult with the resident’s physician, under certain listed circumstances, which are the same as the current rule, except that, with respect to a “need to alter treatment significantly,” the new rule makes clear that this includes a need to change a current treatment, in addition to discontinuing a current treatment or commencing a new treatment.
 - When providing information to a physician under this section, the new rule requires that facilities ensure all pertinent information is available and provided upon request to the physician.
 - The facility must keep an up-to-date email address on file for the resident representative.
 - The facility must provide information about Medicaid-covered and non-Medicaid covered services (i) to residents “*eligible for Medicaid*” and (ii) at the time of admission to the nursing facility *and* when the resident becomes eligible for Medicaid (changes in new rule in italics).

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- 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 or by the facility's per diem rate. The new rule adds five sub-requirements:
 - Notice as soon as reasonably possible of changes to Medicare and/or Medicaid coverage.
 - 60 day advance written notice of changes in charges for non-Medicare/non-Medicaid-covered services.
 - 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.
 - Payment of any and all refunds due within 30 days of discharge.
 - 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.
- Privacy and Confidentiality:
 - The facility must grant ombudsman representatives the right to examine a resident's clinical records, which include "medical, social and administrative records." This is intended to conform to the separate, recently finalized federal rule governing the ombudsman program. This new language drops the requirement of having "resident permission." See also section §483.70(i) on privacy of records privacy of records.
- Safe Environment:
 - A resident "has a right to a safe, clean, comfortable and homelike environment, including but not limited to receiving treatments and supports for daily living safely."
 - The facility must provide a safe, clean and homelike environment, which 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; and
 - The facility shall exercise reasonable care for the protection of the resident's property from loss or theft.

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- Grievances:

- 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. Grievances include those with respect to care and treatment that 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 stay.
- The resident has the right, and the facility must make prompt efforts, to resolve grievances a resident may have.
- The facility must make information on how to file a grievance or complaint available to the resident.
- The facility must establish a grievance policy to ensure the prompt resolution of all grievances regarding 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:
 - Notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances orally or in writing; the right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding the grievance; and the contact information of independent entities with whom grievances may be filed, such as the pertinent State agency, Quality Improvement Organization, State Survey Agency and State Long-Term Care Ombudsman program or protection and advocacy system.
 - 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; issuing written grievance decisions to the resident; and coordinating with state and federal agencies as necessary in light of specific allegations.
 - As necessary, taking immediate action to prevent further potential violations of any resident right while the alleged violation is being investigated.
 - Consistent with reporting requirements, 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.

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- 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.
- Taking appropriate corrective action in accordance with State law if the alleged violation of 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.
- Maintaining evidence demonstrating the results of all grievances for a period of no less than 3 years from the issuance of the grievance decision.

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