

Title 10 MARYLAND DEPARTMENT OF HEALTH

Subtitle 07 HOSPITALS

Chapter 09 Residents' Bill of Rights: Comprehensive Care Facilities and Extended Care Facilities

Authority: Health-General Article, §§19-343—19-347 and 19-349—19-352, Annotated Code of Maryland

.01 Scope.

The provisions of this chapter apply to a health care facility which is licensed as a comprehensive or extended care facility under COMAR 10.07.02. These facilities are generally known as "nursing facilities". Failure to comply with the regulations of this chapter is ground for licensure enforcement actions.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Abuse of a Resident.

(a) "Abuse of a resident" means:

(i) The nontherapeutic infliction upon a resident of physical pain or injury, for example, striking a resident; or

(ii) A persistent course of conduct intended to produce, or resulting in, mental or emotional distress to a resident, for example, verbal intimidation of a resident.

(b) "Abuse of a resident" does not mean the performance of an accepted medical procedure ordered by a physician or administered by another licensed health care professional practicing within the scope of the physician's or health care professional's license.

(2) "Abuse of funds" means the misappropriation of a resident's assets or income. Misappropriation includes spending the resident's assets or income:

(a) Against or without the resident's consent, or, if the resident is incapable of giving consent and has no agent with authority to give consent, when the expenditure is not necessary for the direct and immediate benefit and welfare of the resident; or

(b) For the use and benefit of a person other than the resident, if the resident or agent has not consented to the expense.

(3) "Agent" means a person who manages, uses, or controls the funds or assets that legally may be used to pay an applicant's or resident's share of costs or other charges for the facility's services.

(4) "Certified" means the designation attached to a nursing facility that has met the requirements for participation as a skilled nursing facility in the Medicare Program or as a nursing facility in the Medicaid Program.

(4-1) "Change in condition" means a significant change in the resident's physical, mental, or psychological status including, but not limited to:

(a) Life-threatening conditions such as heart attack or stroke;

(b) Clinical complications such as the:

(i) Development of a pressure sore;

(ii) Onset or recurrent periods of delirium;

(iii) Onset of recurrent urinary tract infection;

(iv) Onset of depression; and

(v) Onset of aggressive or inappropriate behavior;

(c) The need to discontinue a medication or treatment because of:

(i) Adverse consequences; or

(ii) The need to begin a new form of treatment;

(d) Evaluation at or admission to a hospital; or

(e) Accidents that result in injury having the potential for requiring a physician's intervention.

(5) "Chemical restraint" means use of a psychopharmacologic drug to control behavior and not otherwise required to treat medical symptoms.

(6) "Comprehensive care facility" means a nursing facility that admits residents suffering from disease or disabilities or advanced age, who require medical and nursing services rendered by or under the supervision of a registered nurse.

(7) "Consent" means an express agreement by a resident who is capable of making an informed decision or, in cases when the resident is not capable, by the resident's representative.

(8) "Department" means the Maryland Department of Health.

(9) "Director" means the Director of the Office on Aging.

(10) "Disabled resident" means a nursing facility resident who lacks sufficient understanding or capacity to make or communicate a responsible or informed decision on health care or personal finances because of a physical or mental disability, or because of substance abuse.

(11) "Discharge" means the:

(a) Removal of a resident from a nursing facility when the releasing nursing facility is no longer responsible for the resident's care;

(b) Movement of a resident from a certified bed to a noncertified bed;

(c) Movement of a resident from a skilled nursing facility bed under the Medicare Program to a bed not certified under that Program; or

(d) Movement of a resident from a bed certified only for Medicaid to a distinct part of the facility that is a skilled nursing facility under the Medicare Program.

(12) "Emergency" means a situation in which the life, health, or safety of an individual is in imminent and serious jeopardy.

(13) "Extended care facility" means a nursing facility that:

(a) Provides treatment services for residents requiring inpatient care but who do not currently require continuous hospital services; and

(b) Admits residents who:

(i) Require extensive restorative or rehabilitative services, or

(ii) Have a terminal disease requiring extensive nursing care.

(14) Involuntary Transfer or Discharge.

(a) "Involuntary transfer or discharge" means a transfer or discharge of a resident that is initiated by a nursing facility without the consent of the resident or, when applicable, the resident's representative.

(b) "Involuntary discharge" includes a discharge as described in Regulation .12E of this chapter.

(15) "Licensee" means a person licensed by the Department to operate a comprehensive care facility or an extended care facility.

(16) "Licensing and Certification Administration" means the survey and licensing agency, a unit of the Department of Health.

(17) "Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(18) "Nursing facility" means a comprehensive care or extended care facility.

(19) "Office" means the Office on Aging.

(20) "Physical restraint" means a device, including material or equipment, attached or adjacent to a resident's body, that the resident cannot remove easily and that restricts the resident's freedom of movement.

(21) Private Pay.

(a) "Private pay" means a nursing facility's acceptance of payment from a source other than the Medical Assistance Program.

(b) "Private pay" includes reimbursement by the Medicare Program or other third-party insurer.

(22) Relocation.

(a) "Relocation" means the movement of a resident from one room to another within:

- (i) The same Medicare-certified facility;
- (ii) A Medicaid-only certified nursing facility; or
- (iii) A licensed-only nursing facility.

(b) "Relocation" does not mean the movement of a resident if the effect of the movement is to move the resident from:

(i) The distinct part of the nursing facility that is a skilled nursing facility to a distinct part of the nursing facility that is not a skilled nursing facility; or

(ii) A bed that is certified for Medicaid to a distinct part of the nursing facility that is a skilled nursing facility.

(23) "Representative" means a person referenced in Regulation .03 of this chapter.

(24) "Resident" means an individual who is admitted or remains in residence for overnight care in a nursing facility.

(25) "Resident funds" means the assets and income of a resident or nursing home applicant that are under the use, ownership, management, or control of the resident or resident's agent.

(26) "Residents' Bill of Rights" means the statement of basic rights of each resident of a nursing facility as set forth in:

- (a) Health-General Article, §§19-343—19-347 and 19-349—19-352, Annotated Code of Maryland;
- (b) Title XIX of the Social Security Act, 42 U.S.C. §1396(5)(c);
- (c) 42 CFR §483.10 et seq.; and
- (d) The regulations in this chapter.

(27) "Transfer" has the meaning as described in §B(11) of this regulation.

.03 Resident's Representative.

A. A nursing facility or nursing facility's agent shall recognize the authority of:

- (1) A guardian of the person under Estates and Trusts Article, §13-705, Annotated Code of Maryland;
- (2) A guardian of the property under the Estates and Trusts Article, §13-201, Annotated Code of Maryland;
- (3) An advance directive established in compliance with Health-General Article, §5-602, Annotated Code of Maryland;
- (4) A surrogate decision maker with authority under Health-General Article, §5-605, Annotated Code of Maryland;
- (5) A power of attorney established in compliance with Estates and Trusts Article, §13-601, Annotated Code of Maryland;
- (6) An individual exercising a resident's rights pursuant to Health-General Article, §19-344(r), Annotated Code of Maryland, but not for purposes of medical care or treatment;
- (7) A representative payee or other similar fiduciary;
- (8) An agent as defined in Health-General Article, §19-344(c), Annotated Code of Maryland; or
- (9) A person if that person was designated by a resident who was not disabled at the time the designation was made and if the resident or representative has provided the nursing facility with documentation of the designation.

B. A nursing facility may not recognize the authority of a resident's representative if the representative attempts to exceed the authority:

- (1) Stated in the instrument that grants the representative authority; or
- (2) Established by State law.

C. A facility shall document in the resident's record the name of a representative listed in this regulation, including a copy, when applicable, of the designation.

.04 Admission Procedures and Requirements.

A. At the time of admission of a resident, and whenever information changes during the resident's stay, the nursing facility shall notify the resident and, when applicable, a representative or interested family member, in writing and orally, in a language that is easily understood of all terms of admission including, but not limited to the:

(1) Residents' Bill of Rights;

(2) Nursing facility's policies and procedures that implement the Residents' Bill of Rights;

(3) Rules of resident responsibility;

(4) Nursing facility's complaint procedure;

(5) Nursing facility's visitation rules;

(6) Procedures for obtaining a determination from the Medical Assistance Program of the amount of the resident's funds available to pay for the cost of the resident's care;

(7) Procedures for establishing eligibility for Medicaid and for receiving refunds for previous private payments covered by these benefits, including the right to request an assessment under 42 U.S.C. §1396r(5)(c) for the purpose of determining the:

(a) Extent of a couple's nonexempt resources at the time of institutionalization; and

(b) Amount of a couple's resources to be attributed to the community spouse as the spouse's equitable share of resources which are not considered available for payment toward the cost of the institutionalized spouse's medical care or for determining Medicaid eligibility for the institutionalized spouse; and

(8) Resident's rights under State law to formulate advance directives.

B. Upon admission of a resident, a nursing facility shall:

(1) Document in the resident's clinical record whether the resident has executed an advance directive and, if an advance directive exists, keep a copy of the advance directive in:

(a) The resident's clinical record; or

(b) A location within the nursing facility which is accessible to appropriate administrative, nursing, and medical personnel on a 24-hour a day basis;

(2) Prepare an inventory of all property that the resident is bringing into the nursing facility;

(3) Request the resident or representative to identify:

(a) Those items with a value of \$100 or more;

(b) Any damage to an item existing before admission of the resident; and

(c) Whether the resident is retaining possession of each item or is entrusting the item to the nursing facility for safekeeping on behalf of the resident;

(4) Give to the resident and, when applicable, the resident's representative or interested family member, a copy of the inventory prepared under §B(2) of this regulation; and

(5) Advise the resident and, when applicable, a representative or interested family member:

(a) Whether the nursing facility has purchased insurance to cover a resident's tangible personal property for loss or damage due to the facility's negligence; and

(b) Of the limits of insurance coverage.

C. With information provided by the resident or representative, a nursing facility shall periodically update the inventory of the resident's personal property with respect to items having a value of \$100 or more.

D. Required Notification. A nursing facility shall notify in writing:

(1) A resident who is entitled to Medicaid benefits at the time of admission, or when the resident becomes eligible for benefits, of:

(a) Items and services that are included in the per diem rate under Medicaid, and for which the resident may not be charged;

(b) Other items and services that the nursing facility offers and for which the resident may be charged, and the current range of charges for each item and service;

(c) The nursing facility's obligation following admission to notify the resident and, when applicable, the agent or interested family member, of any changes made to the items and services for which the resident may or may not be charged;

(d) The fact that the resident may not be required to pay for an item or service not covered by Medicaid unless the:

(i) Resident or, when applicable, the agent, knowingly requests the item or service; and

(ii) Resident receives the item or service; and

(e) The resident's right, within 90 days of receiving an item or service, to request an itemized statement of charges that:

(i) Briefly and clearly describes each item or service, the amount charged for it, and the identity of the payer billed for the service; and

(ii) Contains a statement in bold and conspicuous print as to when interest may be assessed consistent with Regulation .05B(8) of this chapter;

(2) A private-pay resident, or the resident's agent, of:

(a) The items and services included in the nursing facility's basic per diem rate;

(b) The items and services that are covered by Medicare, and of the amount of any copayments or deductibles;

(c) Other services that the nursing facility offers and for which the resident may be charged, and the current range of charges for the services, including but not limited to charges related to a resident's monthly drug regimen review and other non-drug-related pharmacy costs;

(d) Whether the costs for supplies used in the performance of a service are included in the service charge and the costs of these supplies, within 24 hours of request, when the costs are not included in the service charge; and

(e) The resident's right, within 90 days of receiving an item or service or within 30 days of payment, to request an itemized statement of charges that:

(i) Briefly and clearly describes each item or service, the amount charged for it, and the identity of the payer billed for the service; and

(ii) Contains a statement in bold and conspicuous print as to when interest may be assessed consistent with Regulation .05B(8) of this chapter; and

(3) A resident of changes to be made to the items and services specified in §D(1) and (2) of this regulation, and increases in any fee or charge, or a new fee or charge, or a change in billing procedures, at least 45 days before the increase, new charge, or change becomes effective.

E. A nursing facility shall:

(1) Give the resident a copy of the statement of items, services, and charges provided by the facility;

(2) Provide information regarding services to be rendered by other health care providers, including:

(a) The cost to the resident;

(b) Transportation arrangements; and

(c) Direct or indirect financial interests that the nursing facility has in the provider.

.05 Admission Prohibitions.

A. The acts in §B of this regulation are admission prohibitions.

B. A nursing facility may not:

(1) Require or solicit, as a condition of admission into the nursing facility, the signature of an individual other than the applicant on the application or contract for admission to the nursing facility, unless the:

(a) Applicant is adjudicated disabled in accordance with Estates and Trusts Article, §13-701, Annotated Code of Maryland; or

(b) Applicant's physician determines that the applicant is incapable of understanding or exercising the applicant's rights and responsibilities and records, in the applicant's nursing facility record, the specific reasons for the determination;

(2) Require an individual, including an agent, to incur personal financial liability by signing the contract, although the nursing facility may require the individual to pay for nursing facility care for the resident to the extent of the resident's available income and assets;

(3) Charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under Medicaid, a gift, money, donation, or other consideration as a precondition of admission or expedited admission to, or continued stay in, the nursing facility;

(4) Require residents or applicants to waive their rights to Medicare or Medicaid;

(5) Require oral or written assurances that residents or applicants are not eligible for, or will not apply for, Medicare or Medicaid benefits;

(6) Charge individuals who are eligible for Medicaid more than the rates established by the Medical Assistance Program for these services;

(7) Increase any charge and make the resident liable for the increase until the 46th day after the facility notifies the resident in writing;

(8) Impose an interest penalty on charges for items and services provided to a resident until the later of the following:

(a) 45 days after the nursing facility mails an itemized statement of charges to the resident or the resident's agent; or

(b) 30 days after the end of the period covered by the itemized statement of charges;

(9) Condition providing care or otherwise discriminate against a resident based on whether the resident has or has not executed an advance directive;

(10) Except for contributions toward cost of care as determined by the Medical Assistance Program, charge a resident who is eligible for Medicaid for services, unless the resident or the resident's agent knowingly has requested and received noncovered services, and the nursing facility:

(a) Has given proper notice of the availability and cost of the services to residents; and

(b) Does not condition the resident's admission or continued stay on the request for and receipt of additional services; and

(11) Solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or an individual related to the resident or applicant unless the nursing facility makes clear that the contribution is not a condition of admission to, expedited admission to, or continued stay in the nursing facility.

.06 Admission Contract Required.

A. Before or upon admission, a nursing facility and applicant or, when applicable, the applicant's agent, shall execute an admission contract which has been approved by the Department.

B. If the Department has approved a model contract, a nursing facility shall include within its contract, at a minimum, all of the provisions of the model contract.

C. The nursing facility shall carefully explain all clauses of the contract and answer all questions that the applicant, the applicant's agent, and any interested family member may have.

D. Except as required in §B of this regulation, the applicant and, when applicable, an agent, have the right to delete clauses or sections of the contract with which they do not agree, or to add clauses or sections, subject to the nursing facility's concurrence. Substantive changes require the Department's approval.

E. An admission contract shall include a statement regarding the nursing facility's policies if private funds are exhausted during the resident's stay, including, in clear and concise language, any restrictions with respect to the acceptance of third-party payments.

F. An admission contract used by a certified Medicaid provider shall clearly state that if private funds are exhausted during the resident's stay, and Medicaid payment is available, the nursing facility shall accept Medicaid payments on behalf of the resident.

G. An admission contract used by a certified Medicaid provider shall inform the applicant, through a form established by the Department, that medical eligibility is a requirement for Medical Assistance, and that the applicant should learn if the applicant meets the Medicaid eligibility requirement at the time of admission.

.07 Third-Party Signature on Admission Contract.

A. If a facility requires an individual, other than the applicant or resident, to sign the admission contract, the conditions of Regulation .05B(1) of this chapter shall be met.

B. If an agent, as defined in Regulation .02B(3) of this chapter, signs the contract, the agent accepts responsibility to pay for the cost of the resident's care only to the extent of the resident's available funds and assets.

C. If an agent, as defined in Regulation .02B(3) of this chapter, signs the contract, the agent is not, by signing the contract, accepting any responsibility for making payments from the agent's own personal funds, unless the agent does so voluntarily. The facility shall list separately in the contract any obligations voluntarily entered into by the agent, and the agent shall initial these obligations on the contract.

D. An agent who has not paid a current obligation for the resident's care may apply to the Medical Assistance Program for a determination of the funds available to pay for the cost of the resident's care.

E. An agent shall distribute any funds, including income or assets of the applicant or resident that the Medical Assistance Program has determined to be available, to pay for the cost of the resident's care in the facility.

F. An agent shall seek, on behalf of the applicant or resident, all assistance from the Medical Assistance Program that may be available to the applicant or resident.

G. The Attorney General may impose civil money penalties against an agent who wilfully or with gross negligence violates the requirements of this regulation as follows:

(1) An agent who wilfully or with gross negligence violates §E of this regulation is subject to a civil money penalty not less than the amount of funds subject to the violation; and

(2) An agent who wilfully or with gross negligence violates §F of this regulation is subject to a civil money penalty not exceeding \$10,000.

.08 Resident's Rights and Services.

A. A nursing facility shall provide care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect, and in full recognition of the resident's individuality.

B. A nursing facility may not interfere with a resident's exercise of rights guaranteed under the Constitution or laws of the United States and Maryland.

C. A resident has the right to:

(1) Reside and receive services in a nursing facility with reasonable accommodations of individual needs and preferences, except when accommodations would endanger the health or safety of the resident or other residents;

(2) Receive treatment, care, and services that are in an environment that promotes maintenance or enhancement of each resident's quality of life;

(3) A dignified existence, self-determination, and communication with and access to individuals and services inside and outside the nursing facility;

(4) Be free of interference, coercion, discrimination, or reprisal from the nursing facility when exercising the resident's rights;

(5) Be free from:

(a) Physical abuse;

(b) Verbal abuse;

(c) Sexual abuse;

(d) Physical or chemical restraints imposed for purposes of discipline or convenience;

(e) Mental abuse; and

(f) Involuntary seclusion;

(6) Choose an attending physician, if the physician agrees to abide by nursing facility policies and procedures, and the regulations in this chapter;

(7) Choose a pharmacy to obtain medications as set forth in COMAR 10.07.02.15B(3) and D(3);

(8) Be fully informed in advance about care and treatment, and of proposed changes in that care or treatment;

(9) Participate in planning care and treatment, or changes in care or treatment;

(10) Seek advice from the resident care advisory committee concerning the options for medical care and treatment for an individual with a life-threatening condition in accordance with Health-General Article, §19-370 et seq., Annotated Code of Maryland;

(11) Consent to or refuse treatment, including the right to accept or reject artificially administered sustenance in accordance with State law;

(12) Self-administer drugs if the interdisciplinary team determines that the practice is safe;

(13) Access the resident's records within 24 hours, excluding weekends and holidays, upon an oral or written request;

(14) Purchase copies of all or part of the resident's records upon request by giving 2 working days advance notice to the nursing facility;

(15) Approve or refuse the release of personal and clinical records to an individual outside the nursing facility unless:

(a) Otherwise provided by Health-General Article, §4-301 et seq., Annotated Code of Maryland; or

(b) The release is required by law;

(16) Personal privacy, including:

(a) Confidentiality of personal records; and

(b) Privacy in:

(i) Medical treatment, and

(ii) Personal care;

(17) Privacy in the resident's room, including the right to have nursing facility staff knock before entering the resident's room;

(18) Privacy in written communication, including the right to:

(a) Send and receive mail promptly without it being opened by anyone other than the resident, except when the resident requests assistance; and

(b) Have access to stationery, postage, and writing implements at the resident's own expense;

(19) Reasonable access to the private use of a telephone;

(20) Meet or visit privately with any individual the resident chooses, subject to reasonable restrictions by the nursing facility on visiting hours and places;

(21) Visit or meet privately with the following, to whom the nursing facility shall provide reasonable access:

(a) A representative of the Secretary of the U.S. Department of Health and Human Services;

(b) A representative of the Department;

(c) The resident's personal physician;

(d) A representative of the State Long-Term Care Ombudsman Program;

(e) The agency responsible for advocacy and protection of developmentally disabled and mentally ill individuals in Maryland;

or

(f) Any other legal representative;

(22) Visit privately with the resident's spouse or domestic partner;

(23) Consent or deny consent to all visits, and may deny or withdraw consent at any time;

(24) Examine the results of the most recent federal and State surveys, including the annual survey and any subsequent complaint investigations, not otherwise prohibited by law, of the nursing facility and any plans of correction prompted by these surveys;

(25) Receive notice before the resident's roommate is changed and, to the extent possible, have input into the choice of roommate;

(26) Voice grievances, including those about treatment or care that is or fails to be furnished, and recommend changes in policies and services, to the staff or administrator of the nursing facility, the Licensing and Certification Administration, the Office on Aging, or any other person, without fear of reprisal, restraint, interference, coercion, or discrimination;

(27) Prompt efforts by the nursing facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

(28) Contact and receive information from agencies acting as client advocates;

(29) Refuse to perform services for the nursing facility;

(30) Perform services for the nursing facility if the resident chooses, only if:

(a) The nursing facility has documented the need or desire for work in the plan of care;

(b) The plan specifies the nature of the services to be performed and whether the services are voluntary or paid;

(c) Compensation for paid services is at or above prevailing rates; and

(d) The resident agrees in writing to the work arrangement described in the plan of care, and the contract is part of the resident's record;

(31) Share a room with the resident's spouse if both spouses consent and it is not medically contraindicated; and

(32) Participate in social, religious, and community activities if the activities do not interfere with the rights of other residents in the nursing facility.

D. A resident has the right to participate or refuse to participate in experimental research. When the resident is incapable of making this decision, the resident's appropriate representative may consent for participation in therapeutic experimental research only.

E. The resident or, when applicable, the resident's health care representative, has the right to be fully informed, in a language that the resident or representative can reasonably be expected to understand, of complete and current information about the resident's diagnosis, treatment, and prognosis, unless it would be medically inadvisable as documented by the resident's attending health care provider. If this determination has been made, the health care provider shall, upon written request:

(1) Make a summary of the undisclosed portion of the medical record available to the resident or health care representative;

(2) Insert a copy of the summary in the medical record of the resident;

(3) Permit examination and copying of the medical record by another health care provider; and

(4) Inform the resident or health care representative of the resident's or health care representative's right to select another health care provider.

F. Resident and Family Groups.

(1) A resident has the right to organize and participate in resident groups in the nursing facility.

(2) A resident's family has the right to meet in the nursing facility with the families of other residents.

(3) Staff or other visitors may attend meetings only at the group's invitation.

.09 Implementation of Residents' Bill of Rights.

A nursing facility shall:

A. Ensure that:

(1) The rights of residents as set forth in the Residents' Bill of Rights are protected, including but not limited to informing each resident of the resident's right to select a physician and pharmacy of the resident's choice;

(2) Employees of the nursing facility are trained to:

(a) Respect and enforce the Residents' Bill of Rights and the nursing facility's policies and procedures that implement the Residents' Bill of Rights; and

(b) Protect the rights of residents;

(3) The nursing facility's policies and procedures implement all rights of the residents as set forth in:

(a) Health-General Article, §§19-343—19-347 and 19-349—19-352, Annotated Code of Maryland;

(b) Title XIX of the Social Security Act;

(c) 42 CFR §483.10 et seq.; and

(d) The regulations of this chapter; and

(4) The nursing facility's policies comply with the requirements of federal and State law concerning advance directives, including but not limited to:

(a) If an applicant is incapacitated or is incapable of informing the nursing facility whether the applicant has executed an advance directive, the facility may provide advance directive information to the resident's health care representative; and

(b) Once the resident is no longer incapacitated, the facility shall provide the advance directive information to the resident directly at the appropriate time;

B. Post conspicuously in a public place accessible to residents:

(1) The Residents' Bill of Rights in large, clearly readable type;

(2) The nursing facility's complaint procedures in large, clearly readable type;

(3) The nursing facility's statement of deficiencies for the most recent survey and any subsequent complaint investigations conducted by federal or State surveyors and any plans of correction in effect with respect to the survey or complaint investigation findings; and

(4) Signs provided by the Department to notify the visiting public and residents:

(a) That complaints may be made to the Department or to the Office;

(b) How to report an instance of abuse of a resident to the Department, the Office, or law enforcement agencies; and

(c) How to file a complaint with State agencies and client advocacy agencies, such as the Licensing and Certification Administration, the Office on Aging, the Older Americans Act Legal Services providers, the Maryland Disabilities Law Center, State Medicaid Fraud Unit, and the Legal Aid Bureau, Inc.;

C. Establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals, regardless of source of payment;

D. Provide each resident and, if applicable, the resident's appropriate representative or interested family member, with a written description of the resident's legal rights, including a:

(1) Description of the manner of protecting resident funds; and

(2) Statement that the resident may file a complaint with the Department or the Office concerning resident abuse, neglect, misappropriation of resident property in the nursing facility, and noncompliance with advance directive requirements;

E. Place the name, address, and telephone number of the physician who is responsible for the resident's care within easy access of the resident;

F. Inform the resident and the appropriate legal representative, or interested family member, and promptly consult with the resident's physician if any of the following incidents occur:

- (1) An accident involving the resident which results in injury;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the nursing facility;

G. Consistent with State and federal confidentiality laws and, in a timely manner, notify a resident and, if applicable, the resident's representative or interested family member, of any:

- (1) Change in condition;
- (2) Adverse event that may result in a change in condition;
- (3) Outcome of care that results in an unanticipated consequence; and
- (4) Corrective action, if any;

H. Notify the resident and, when applicable, the appropriate representative, or interested family member, when there is a change in:

- (1) Room or roommate assignment;
- (2) The Residents' Bill of Rights; or
- (3) Federal or State law and regulations relating to residents' rights;

I. Record and update the address and phone number of the resident's representatives and interested family members;

J. Permit representatives of the State Long-Term Care Ombudsman Program to accomplish their responsibilities, as set forth in 42 U.S.C. §3058g, the State Long-Term Care Ombudsman Program;

K. Encourage the activities of resident and family groups by:

- (1) Providing the residents and their families with private space for meetings;
- (2) Designating a staff person to provide assistance and respond to written requests from residents and their families;
- (3) Listening to the views of residents and their families;
- (4) Acting upon the grievances and recommendations of residents and their families concerning proposed policy and operational decisions affecting resident care and life in the nursing facility; and
- (5) Advising resident and family groups of the disposition of their grievances and recommendations;

L. Educate staff, residents, representatives, and interested family members on advance directives;

M. When applicable, promptly provide the Medical Assistance Program with all required information in its possession; and

N. Provide copies of clinical records upon request, based on the following charges:

- (1) A fee for copying and mailing not exceeding 50 cents per page;
- (2) A discretionary fee not to exceed \$15 for record retrieval and preparation;
- (3) The actual cost of postage and handling of the copies; and

(4) A discretionary annual adjustment in the fees described in §M(1)—(3) of this regulation based on the current Consumer Price Index.

.10 Resident Transfers and Discharges.

A. A nursing facility may not involuntarily transfer or discharge a resident from the nursing facility unless the:

- (1) Transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;
- (2) Transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the health care or services provided by the nursing facility;
- (3) Resident's presence endangers the health or safety of other individuals in the nursing facility;
- (4) Resident has failed, after reasonable and appropriate notice, to pay, or to have paid under third-party payers, for a stay at the nursing facility; or
- (5) Nursing facility ceases to operate or, in the case of a resident who receives Medicare or Medicaid services, when the nursing facility has been decertified or has withdrawn from the Medicare or Medicaid Program.

B. A resident has a right to request a hearing on the proposed transfer or discharge, except when the transfer or discharge is being taken pursuant to §A(5) of this regulation.

C. Notice.

(1) Transfer and Discharge. Except in emergency situations such as a hospitalization, or if the resident has not resided in the facility for 30 days, the nursing facility shall notify the resident, representative, or interested family member, the State Long-Term Care Ombudsman, and the Department at least:

(a) 30 days before any proposed transfer or discharge if the nursing facility is not part of a continuing care retirement community as defined in Article 70B, Annotated Code of Maryland; or

(b) 60 days before any proposed transfer or discharge if the nursing facility is part of a continuing care retirement community.

(2) Emergency Transfers, Discharges, and Relocations. In an emergency situation, a nursing facility shall notify the resident, representative, or interested family member of a transfer as soon as possible.

D. Contents of Notice. The required notice to a resident under this regulation shall be on a form developed by the Department and shall include:

- (1) Each reason for the proposed transfer or discharge;
- (2) A statement that the resident has the right to request a hearing on a proposed transfer or discharge, and how to request a hearing pursuant to Regulation .13 of this chapter, except in the case of a discharge made pursuant to §A(5) of this regulation;
- (3) The name, address, and telephone number of the State's Office on Aging and local office on aging long-term care ombudsman;
- (4) The right of a resident to consult with any lawyer the resident chooses;
- (5) The name, address, and telephone number of the Legal Aid Bureau, The Older American Act Senior Legal Assistance Programs, and other agencies that may provide assistance to individuals who need legal counsel;
- (6) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals;
- (7) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals;
- (8) The effective date of the proposed transfer or discharge which, except as set forth in §C of this regulation, is at least 30 days after receiving the notice and at least 60 days after receipt of the notice if the nursing facility is part of a continuing care retirement center; and
- (9) The resident's rights concerning discharge, as set forth in Regulation .11 of this chapter.

E. Documentation.

(1) In the event of a discharge or transfer of a resident, a nursing facility shall ensure that the following appears in the resident record:

(a) The circumstances surrounding the discharge or transfer, including interventions initiated by the facility before proposing the discharge;

(b) The notice described in §§C and D of this regulation; and

(c) If applicable, any express consent given by the resident or, when applicable, the resident's representative.

(2) When a resident is transferred or discharged pursuant to §A(1) and (2) of this regulation, the resident's physician shall document in the resident's clinical records the reason or reasons why the transfer or discharge is necessary.

(3) When a resident is transferred or discharged pursuant to §A(3) of this regulation, a physician shall document in the resident's clinical records the reason or reasons why the transfer or discharge is necessary.

.11 Involuntary Discharge or Transfer of a Resident.

A. In addition to the provisions of Regulation .10 of this chapter, a facility may not involuntarily discharge or transfer a resident unless, within 48 hours before the discharge or transfer, the facility has:

(1) Provided or obtained:

(a) A comprehensive medical assessment and evaluation of the resident, including a physical examination, that is documented in the resident's medical record;

(b) A post-discharge plan of care for the resident that is developed, if possible, with the participation of the resident's representative; and

(c) Written documentation from the resident's attending physician indicating that the transfer or discharge is in accordance with the post-discharge plan of care and is not contraindicated by the resident's medical condition; and

(2) Provided information to the resident concerning the resident's rights to make decisions concerning health care, including the right to:

(a) Accept or refuse medical treatment;

(b) Make an advance directive, including the right to make a living will and the right to appoint an agent to make health care decisions; and

(c) Revoke an advance directive.

B. With the exception of residents of a certified continuing care facility as set forth in §D of this regulation, at the time of transfer or discharge, the facility shall provide the resident and, when appropriate, the representative or interested family member with:

(1) A written statement of the medical assessment and evaluation and post-discharge plan of care required under §A of this regulation;

(2) A written statement itemizing the medications currently being taken by the resident;

(3) To the extent permitted under federal and State law, at least a 3-day supply of the medications currently being taken by the resident;

(4) Information necessary to assist the resident or the resident's representative in obtaining additional prescriptions for necessary medication through consultation with the resident's attending physician; and

(5) A written statement containing the date, time, method, mode, and destination of the resident's discharge.

C. A facility may not discharge or transfer a resident:

(1) Unless the resident or appropriate representative consented in writing to the discharge or transfer; or

(2) Except when the discharge or transfer:

(a) Is in accordance with a post-discharge plan of care developed under §A of this regulation;

(b) Is to a safe and secure environment where the resident will be under the care of a:

(i) Licensed, certified, or registered care provider; or

(ii) Person who has agreed in writing to provide a safe and secure environment.

D. A continuing care facility certified under Article 70B, Annotated Code of Maryland, is not subject to §B of this regulation if the:

(1) Facility transfers a resident to a lesser level of care within the same facility in accordance with a contract between the facility and the resident; and

(2) Transfer is approved by the resident's attending physician.

E. If the requirements of §§A—D of this regulation have been met, the resident's representative, in conjunction with the facility, shall cooperate and assist in the resident's discharge planning, including:

- (1) Contacting, cooperating with, and assisting other health care facilities considering admitting the resident; and
- (2) Cooperating with government agencies, including applying for Medical Assistance for the resident.

F. If requested by a person during the process of transferring or discharging a resident, or on its own initiative, the Office of the Attorney General may investigate whether an abuse of a resident's funds contributed to the decision to transfer or discharge the resident, and may make appropriate referrals of the matter to other government agencies.

G. The Secretary may impose a civil money penalty not to exceed \$10,000 for each:

- (1) Violation by a facility of its obligations under this regulation and Regulation .10 of this chapter; or
- (2) Willfully or grossly negligent violation by a resident's representative of the representative's obligations under this regulation and Regulation .10 of this chapter.

H. If a civil money penalty is imposed under §G of this regulation, the facility or representative has the right to request a hearing on the proposed civil money penalty in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 10.01.04.

I. A resident, resident's representative, resident's attorney, or the Attorney General, on behalf of a resident who believes that an involuntary discharge or transfer that violates this regulation is imminent or has taken place, may request appropriate injunctive relief from the appropriate circuit court.

.12 Resident Relocation and Bed Hold.

A. Notification of Resident Relocation Within a Facility.

(1) Except in emergency situations or when it is documented in the resident's record that a resident's physical, clinical, or psychological well-being would be jeopardized, a nursing facility shall notify a resident or, when applicable, the resident's representative or interested family member, if available, in writing at least 30 days before the resident is relocated within a facility or to a different part of a facility, unless the resident or, if the resident is incapacitated, the resident's legally authorized representative, agrees to the relocation and this is documented in the resident's record.

(2) Under the limited conditions set forth in §A(1) of this regulation where 30-days notice cannot be provided in advance of a relocation, the facility shall document that it has provided notice of the relocation as soon as practicable.

(3) When a resident is relocated, the facility shall elicit and make reasonable efforts to comply with the resident's request of location and, if applicable, assignment of roommate.

B. A resident's right to refuse a change in room assignment under §A of this regulation does not affect the resident's eligibility or entitlement to Medicaid benefits.

C. Notice.

(1) Notice of Bed-Hold Policy at the Time of Admission. At the time of admission, a nursing facility shall provide written information to a resident or, when applicable, the resident's representative or interested family member, describing the facility's bed-hold policy, including the period of time during which the resident is permitted to return and resume residence in the nursing facility.

(2) Notice of Bed-Hold Policy at Time of Transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility shall provide a written notice to the resident, or when applicable, the resident's representative or interested family member, which specifies the duration of the bed-hold policy described in §C of this regulation.

D. Permitting a Resident to Return to the Nursing Facility. When a resident's hospitalization or therapeutic leave exceeds the bed-hold period under the State Medicaid plan, the resident has a right to be readmitted to the nursing facility immediately upon the first availability of a bed in a semiprivate room if the resident:

(1) Requires the services provided by the nursing facility; and

(2) Is eligible for Medicaid coverage for the nursing facility's services.

E. Unless the bed hold has expired, for purposes of this regulation, transfer includes the refusal of a nursing facility to accept the return of a resident who was previously transferred from the nursing facility:

(1) Whose bed at the nursing facility was continuously reserved or required to be reserved through payment to the nursing facility from any source; or

(2) Who had an application for medical assistance pending at the time of the transfer if there is no reason to believe that the application will not be approved.

F. Transfer and Discharge Planning. In addition to the requirements of Regulation .11 of this chapter, a nursing facility shall provide, in all cases, orientation and planning to residents to ensure safe and orderly transfer of discharge from the nursing facility.

.13 Hearings for Transfers and Discharges, and Establishment of an Escrow Account.

A. A resident may request a hearing within 30 days of receiving a notice of an intended involuntary transfer or discharge as provided in Regulation .10C of this chapter.

B. Except in an emergency or when the resident has resided in a facility for less than 30 days, after a request for a hearing has been filed, a nursing facility may not discharge or transfer the resident until:

- (1) A final decision is issued after the hearing and all requirements of Regulation .11 of this chapter are met; or
- (2) The resident consents to the discharge or transfer and withdraws the request for a hearing.

C. Procedure.

(1) The resident shall send a written request for a hearing to the Office of Administrative Hearings by the 30th calendar day after the resident receives the nursing facility's notice of the proposed transfer or discharge.

(2) After receiving the written request, the Office of Administrative Hearings shall schedule a hearing.

(3) The Office of Administrative Hearings shall conduct the hearing in accordance with COMAR 10.01.04 and 28.02.01.

(4) The Department is not a party to a hearing conducted pursuant to this regulation. The parties are the nursing facility and the resident. Therefore, a hearing conducted pursuant to this regulation is not a contested case as defined in the Administrative Procedure Act, State Government Article, §10-202, Annotated Code of Maryland.

D. A facility may require that an escrow account be established when the:

- (1) Basis for a resident's discharge is nonpayment; and
- (2) Resident continues to reside in the facility pending a final decision.

E. If an escrow account is required under §D of this regulation, the facility shall develop a policy and procedure that is acceptable to the Department concerning the establishment and disposition of funds from the escrow account.

.14 Physical and Chemical Restraints.

A. Physical restraints may be used only:

- (1) As an integral part of an individual medical treatment plan;
- (2) If absolutely necessary to protect the resident or others from injury;
- (3) If prescribed by a physician or administered by another health care professional practicing within the scope of their license; and
- (4) If less restrictive alternatives were considered and appropriately ruled out by the physician.

B. Use of Physical Restraints.

- (1) When a facility uses physical restraints, personnel:
 - (a) Trained in the use of restraints shall check a resident in restraint at least every 2 hours, and maintain a record of the checks and usage; and
 - (b) Shall provide opportunities for motion and exercise during each 2-hour period in which physical restraint is used, and shall monitor the use of the restraint use and maintain a record of it.
- (2) The attending physician shall ensure that treatment plans include provisions for the progressive elimination of physical restraints.

C. Use of Psychopharmacologic Drugs. When a physician prescribes psychopharmacologic drugs for a resident, the resident's clinical records shall contain all of the following documentation:

- (1) A physician's indication that the dosage, duration, indication, and monitoring are clinically appropriate and the reasons why they are clinically appropriate;
- (2) Indication that the resident is being monitored for adverse complications of the drug therapy;
- (3) Confirmation that previous attempts at dosage reduction have been unsuccessful, if applicable;
- (4) Evidence of the resident's subjective or objective improvement, or maintenance or function, while taking the medication;
- (5) Evidence that the resident's decline or deterioration, if applicable, has been evaluated by the interdisciplinary team to determine whether a particular drug, a particular dosage, or duration of therapy may be the cause;
- (6) Evidence of why the resident's age, weight, or other factors would require a unique drug dose, drug duration, indication, or monitoring; or
- (7) Other evidence that substantiates the use of the restraint.

.15 Abuse of Residents.

A. A nursing facility shall develop and implement policies and procedures prohibiting abuse and neglect of residents.

B. A nursing facility may not knowingly employ an individual who has been convicted of abusing or neglecting a resident or who has had a finding entered into the State Nurse Aide Registry concerning abuse or neglect of a resident or misappropriation of a resident's property.

C. Reports of Abuse.

(1) A person who believes that a resident has been abused shall promptly report the alleged abuse to the:

- (a) Appropriate law enforcement agency;
- (b) Licensing and Certification Administration within the Department; or
- (c) The Office on Aging.

(2) An employee of a nursing facility who believes that a resident has been abused:

- (a) Shall report the alleged abuse as set forth in §C(1) of this regulation within 3 days after learning of the alleged abuse;
- (b) May be subject to a penalty imposed by the Secretary of up to \$1,000 for failing to report an alleged abuse within 3 days after learning of the alleged abuse.

(3) An individual on whom a penalty has been imposed may request a hearing on the penalty by submitting a written request for a hearing to the Department on or before the 30th calendar day after the individual received notice of the imposition of the penalty.

(4) Upon receiving a request for a hearing under this section, the Secretary shall conduct a hearing in accordance with COMAR 10.01.03.

D. Investigations. A nursing facility shall:

- (1) Thoroughly investigate all allegations of abuse; and
- (2) Take appropriate action to prevent further incidents of abuse while the investigation is in progress, and after that.

E. Immunity from Civil Liability. An individual who, acting in good faith, makes a report under this regulation has immunity from liability described in Health-General Article, §19-347(g), Annotated Code of Maryland.

.16 Complaint Procedure.

A. A resident, the resident's representative, or an interested individual has the right to:

- (1) Make a complaint about the nursing facility;
- (2) Recommend a change in facility policy and procedure; and
- (3) Be free from reprisal, restraint, interference, coercion, or discrimination by the nursing facility or its employees as a result of making a complaint or recommending a change in policy.

B. A nursing facility shall develop and implement the following complaint procedures:

- (1) A resident, the resident's representative, or an interested individual may present complaints to:
 - (a) The nursing facility administration;
 - (b) The nursing facility's staff;
 - (c) The Office;
 - (d) The Department; or
 - (e) Other persons or groups;
- (2) A complaint may be made to the nursing facility in person, orally or in writing, by telephone or by mail, and may be reported anonymously;
- (3) A nursing facility may not require the signature of the resident or, when applicable, the resident's representative or an interested individual on a complaint;
- (4) If a complaint is presented to a nursing facility, the nursing facility shall investigate within 30 days the allegations made in the complaint and advise the complainant of the action the nursing facility is taking to resolve the complaint;
- (5) A nursing facility shall send to the Office and the Department a copy of any complaint that a complainant indicates has not been resolved to the satisfaction of the complainant;
- (6) A nursing facility shall maintain a permanent record for inspection by the Office or the Department of all complaints concerning the nursing facility; and
- (7) A complainant may request a hearing from the Department within 30 days of receiving the facility's response to the complaint or within 60 days of filing the complaint, whichever is earlier.

C. A complaint which has not been resolved to the satisfaction of the complainant may be resolved through a hearing as follows:

- (1) After receiving a written request for a hearing, the Department shall forward a copy of the request to the Office and schedule a hearing;
- (2) The nursing facility may be represented by the nursing facility administrator, designee, or counsel;
- (3) The complainant may be represented by:
 - (a) The complainant;
 - (b) The Office;
 - (c) Counsel; or
 - (d) Any other individual;
- (4) The Department's Director of Licensing and Certification, or a designee of the Director, shall conduct the hearing;

(5) The Director or the Director's designee may:

- (a) Receive testimony from both parties;
- (b) If appropriate, issue deficiencies and require the nursing facility to submit a plan of correction;
- (c) Attempt to assist the parties in reaching a satisfactory resolution;
- (d) Notify the complainant of the results of the findings and any actions taken; and
- (e) Notify the appropriate State's attorney if there is evidence of criminal conduct.

D. A hearing conducted under §C of this regulation is not a contested case as defined in State Government Article, §10-202, Annotated Code of Maryland.

.17 Personal Property of Residents.

A. Personal Possessions.

(1) A resident has the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless to do so would be detrimental to the rights or health and safety of other residents.

(2) A facility shall take reasonable steps to ensure the safety and security of the personal belongings of its residents.

(3) A facility shall provide a reasonable amount of locked storage space for personal property upon the request of a resident.

B. A nursing facility may not limit the amount of funds it keeps on behalf of a resident, but may limit the amount of other property that it retains on behalf of the resident.

C. A nursing facility shall establish written procedures to prevent loss or damage to, and protect, property.

D. A nursing facility shall establish written procedures for investigating an incident of loss or damage to the property of a resident, including:

(1) A procedure by which an individual, including a resident or representative of a resident, may report loss or damage;

(2) The designation of an employee of the nursing facility to:

(a) Receive reports of loss or damage;

(b) Conduct an investigation; and

(c) Inform the resident, or when applicable, a representative or interested family member, of the results of the investigation.

E. Release of Personal Property. A nursing facility shall release the property of a resident to:

(1) The resident or a representative upon the:

(a) Request of the resident; or

(b) Transfer or discharge of the resident from the nursing facility; or

(2) A government agency acting pursuant to legal authority.

F. Disposition of Personal Property Upon the Death of a Resident.

(1) Immediately upon but not later than 30 business days after the death of a resident, a nursing facility shall provide notice of the resident's property being held by the facility to:

(a) The resident's representative or interested family member; and

(b) Government agencies which have paid any part of the nursing facility charges for the resident.

(2) Upon the death of a resident, the nursing facility shall release:

(a) The resident's wearing apparel other than furs and jewels to a representative or immediate family member; and

(b) Other personal property only to an individual who presents certified letters of administration that designate the individual as "Representative of the Estate of _____".

(3) Personal property or income derived from the cash conversion of personal property that a facility holds for a discharged or deceased resident is presumed abandoned in accordance with Commercial Law Article, Title 17, Annotated Code of Maryland, when the property or income from cash conversion is not claimed within 1 year.

(4) When a nursing facility is still holding a resident's personal property 1 year after the resident's death, the nursing facility shall notify the Unclaimed Property Section, Comptroller of the Treasury, for appropriate direction.

.18 Protection of a Resident's Personal Funds.

A. A resident has the right to:

- (1) Manage the resident's financial affairs; or
- (2) Choose any person who is willing to handle the resident's financial affairs.

B. Except as authorized by being appointed representative payee, a nursing facility may not manage a resident's funds without an express written request from:

- (1) The resident; or
- (2) An agent who has legal authority to make decisions regarding the resident's funds.

C. Management of Personal Funds. Upon written authorization of a resident or agent, a nursing facility shall hold, safeguard, manage, and account for the resident's personal funds that are deposited with the nursing facility as specified in this regulation.

D. Personal Funds in Excess of \$50. A nursing facility shall:

- (1) Deposit a resident's personal funds in excess of \$50 in an interest-bearing account that is:
 - (a) Established and maintained by the facility under one of the following terms:
 - (i) In the name of the resident only;
 - (ii) In the name of the facility "in trust for" or as the "trustee" for the individual resident; or
 - (iii) In a residents' pooled account, with a separate accounting for each resident's share; and
 - (b) Located in a financial institution whose accounts are insured by the:
 - (i) Federal Deposit Insurance Corporation (FDIC);
 - (ii) Federal Savings and Loan Insurance Corporation (FSLIC); or
 - (iii) Other insurer approved by the Department; and
 - (c) Separate from any of the nursing facility's operating accounts; and
- (2) Credit all interest earned to the resident's account at least quarterly.

E. Personal Funds Less Than \$50. A nursing facility may maintain a resident's personal funds that do not exceed \$50 in a petty cash fund or a non-interest-bearing account that is identified as a residents' account.

F. Establishment of Resident Accounts. When a nursing facility manages a resident's financial affairs, the nursing facility shall establish and maintain a system that:

- (1) Ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing facility; and
- (2) Precludes any commingling of resident funds with the nursing facility funds.

G. For all resident funds entrusted to a nursing facility, the facility shall:

- (1) Establish and maintain adequate fire and theft coverage to protect a resident's funds that are on the premises of the nursing facility; and
- (2) Otherwise ensure the security of all residents' personal funds deposited with the nursing facility by purchasing a surety bond with the State as obligee on behalf of the nursing facility residents.

H. Limitation on Charges to Personal Funds. A nursing facility may not:

(1) Impose a charge against a resident's personal funds for:

(a) An item or service for which payment is made under Medicare or Medicaid; and

(b) A cost or fee incurred by the facility for establishing and servicing the resident's accounts; or

(2) Use a Medicaid resident's personal funds to offset a contribution of care debt unless authorized by the resident, the resident's agent, or a court.

.19 Records of Resident Personal Funds.

A. Records. For all resident funds entrusted to a nursing facility, the facility shall:

(1) Maintain an individual record for the funds of each resident, which includes the following information regarding each fund transaction:

- (a) The date of the transaction;
- (b) The type of transaction, whether it is a deposit, withdrawal, or any other transaction;
- (c) When the transaction is a withdrawal or deposit, reference to a numbered receipt; and
- (d) The balance of funds after the completion of the transaction;

(2) At least weekly, post to the record of the funds all deposits, withdrawals, and other transactions;

(3) Furnish each resident or, when applicable, the resident's agent or interested family member, with a quarterly statement of the resident's individual account not later than 30 days after the end of each quarter;

(4) Make available for inspection by the resident or, when applicable, the resident's agent or interested family member, a monthly statement of the resident's account; and

(5) Make available at the nursing facility, for audit by the Department and the Office, records pertaining to each resident's funds.

B. Receipts of Transactions.

(1) If a transaction involves a transfer of funds between a resident and a second party, or between the nursing facility and the institution in which the resident's account is located, the nursing facility or financial institution shall:

(a) Provide a receipt or copy of a receipt to the resident, or retain the resident's copy of the receipt as part of the resident's individual financial record; and

(b) Maintain the original receipt and make it available for audit.

(2) Except as provided in §B(3) of this regulation, a nursing facility shall require that each receipt for withdrawal of funds from a resident's account be signed by the resident or, when applicable, the resident's agent.

(3) A nursing facility may allow a resident to withdraw money from the resident's account without signing a receipt only if the nursing facility documents that the resident is not disabled but is incapable of signing due to a physical disability.

(4) Except as set forth in Regulation .18H(2) of this chapter, a nursing facility may withdraw money from a resident's account without written authorization of the resident or, when applicable, the resident's agent, if the:

(a) Nursing facility documents that the resident is incapable of understanding the resident's rights and responsibilities regarding finances;

(b) Resident's agent is unavailable; and

(c) Withdrawal of funds is for an item or service needed for the resident's direct and immediate benefit and the facility maintains documentation that the withdrawal was used for that purpose.

(5) A withdrawal under §B(4) of this regulation requires witness signatures of two facility employees authorized by the facility administrator.

C. Availability of Funds.

(1) A resident has the right to access funds entrusted to the nursing facility:

(a) During normal business hours, if the funds are held within the facility; or

(b) Within 3 banking days, if a bank, the State treasurer, or a county or municipal treasurer holds the money.

(2) When a nursing facility transfers or discharges a resident, the nursing facility shall either:

(a) Request and follow the resident's written instructions for transferring the money;

(b) Return, upon the resident's or, when applicable, the resident's agent's demand, the resident's money that the nursing facility has in its possession and have the resident or agent sign a receipt for the money; or

(c) Make available to the resident or the resident's agent, within 3 banking days, the resident's money which is in an account with a bank, the State treasurer, or county or municipal treasurer.

D. Notice of Balances. A nursing facility shall provide written notification to a resident who receives Medicaid benefits:

(1) As specified in §1611(a)(3)(B) of the Social Security Act when the amount in the resident's account reaches \$200 less than the Supplemental Security Income (SSI) resource limit for one individual; and

(2) That, when the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one individual, the resident may lose eligibility for Medicaid or SSI.

E. Death of a Resident. Upon the death of a resident for whom a nursing facility is holding funds, the nursing facility shall notify the resident's agent or interested family member and:

(1) Convey within 30 days a final accounting of the resident's personal funds which are deposited with the nursing facility;

(2) Transfer, pursuant to the resident's preexisting burial contract, an amount not to exceed the outstanding unpaid balance of the contract, or the total of the resident's funds entrusted to the nursing facility, whichever is less;

(3) Release the resident's funds only to an individual who presents certified letters of administration that designate the person as "Representative of the Estate of _____"; and

(4) When the nursing facility is still in possession of a resident's funds 1 year after the resident's death, the facility shall report all money it holds for the former resident to the Unclaimed Property Section, Comptroller of the Treasury.

.20 Misuse of Resident's Funds.

A. A person may not misappropriate a resident's assets or income, including spending the resident's assets or income against or without the resident or resident's agent's consent, except as permitted by Regulation .19B(4) of this chapter.

B. A person who believes that there has been an abuse of a resident's funds may make a complaint to the:

- (1) Local department of social services;
- (2) Director of the Office on Aging if the resident is 65 years old or older; or
- (3) Director of the Licensing and Certification Administration, regardless of the resident's age.

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